



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH.
SECOND ASSISTANT COUNTY ATTORNEY

MEMORANDUM

TO: Robert M. Graber, Clerk, Erie County Legislature
FROM: Michelle M. Parker, First Assistant County Attorney
DATE: July 31, 2012
RE: Transmittal of New Claims Against Erie County

Mr. Graber:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find eight (8) new claims brought against the County of Erie. The claims are as follows:

Claim Name

- Duplicating Consultants, Inc. v. County of Erie
- David Novoa v. County of Erie
- Amanda & Dwayne Littleton v. County of Erie & City of Buffalo
- Omar Mapps v. Sheriff Howard, County of Erie, et al.
- Caitlin O'Neil v. George F. Hasiotis, Erie County Board of Elections
- Stephanie Parobek, et al. v. Erie County Board of Elections
- Deborah Chesson, et al. v. William Morris, Erie County Board of Elections, et al.
- Edward Betz v. Edward Earl Key, et al.

MMP/dld
Attachments
cc: Michael A. Siragusa, County Attorney



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 2, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Duplicating Consultants, Inc. v. County of Erie</i>
Document Received: Name of Claimant:	Summons with Notice Duplicating Consultants, Inc. 315 Creekside Drive Amherst, New York 14228
Claimant's attorney:	Justin S. White, Esq. 5662 Main Street Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

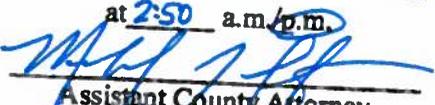
MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle M. Parker* (dld)
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

FILED
06/26/2012/ 14:45:07
ERIE COUNTY CLERK
RCPT # 12100130
I 2012604656

This paper received at the
Erie County Attorney's Office
from Jessica Conti on
the 26 day of June, 2012
at 2:50 a.m./p.m.

Assistant County Attorney

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT

DUPLICATING CONSULTANTS, INC.,
315 Creekside Drive
Amherst, NY 14228-2076,

**SUMMONS WITH
COMPLAINT ENDORSEMENT**

Plaintiff,

Index No.: I-2012-_____

vs.

COUNTY OF ERIE
95 Franklin Street
Buffalo, NY 14202,

Venue: Erie County
Plaintiff's Business

Defendant.

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 New York); and in case of your failure to appear or answer, judgment will be taken against you.

COMPLAINT ENDORSEMENT: Based upon causes of action including nonpayment of a debt, unjust enrichment, account stated and breach of contract, i.e., that pursuant to a Stipulation of Settlement and Agreement, the Plaintiff was to be paid a basic monthly payment of \$50,575.00 along with certain adjustments for copying equipment and servicing to various County Departments and the Defendant has willingly failed to return the Plaintiff's equipment despite demand made therefor and the Defendant has failed, refused and neglected to pay such sums due and owing for services provided through May, 2012 under the aforesaid Agreement. The Plaintiff has been damaged in the amount of One Hundred Fifty One Thousand Seven Hundred Twenty-Five and 00/100 Dollars (\$151,725.00).

Dated: June 26, 2012
Williamsville, NY



LAW OFFICE OF JUSTIN S. WHITE
Attorney for Plaintiff
Office and Post Office Address
5662 Main Street
Williamsville, NY 14221
(716) 631-9100





COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY
JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 13, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Novoa, David v. County of Erie (Inmate at ECHC)</i>
Document Received:	Notice of Claim
Name of Claimant:	David Novoa ICN #133236 Erie County Holding Center 40 Delaware Avenue Buffalo, New York 14202-3999
Claimant's attorney:	Claimant is <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209
Email: parkerm3@erie.gov

MMP:dld
Enclosure

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

11/11/12

-----X

Claimant,

NOTICE OF CLAIM

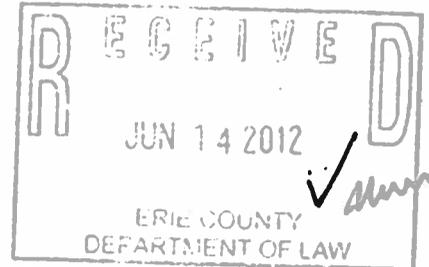
David Novoa

- vs -

THE COUNTY OF ERIE,

Defendant.

-----X



TO: COUNTY OF ERIE
DEPARTMENT OF LAW
95 Franklin Street / Room 1634
BUFFALO, NEW YORK 14202

PLEASE TAKE NOTICE that DAVID NOVOA, hereby claims and demands, pursuant to §50-e of the General Municipal Law, damages against the COUNTY OF ERIE for damages sustained by Claimant by reason of the wrongful, unlawful, negligent and careless acts and omissions of the COUNTY OF ERIE, its agents, servants or employees; and in support thereof, the Claimant states:

1. The name and post office address of the claimant is:
40 DELAWARE AVE Buffalo N.Y. 14202 or
706 H SANDERWOOD CT. Newton N.C. 28258.
2. This claim is for damages sustained by the Claimant while he was an inmate at the Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York 14202-3999.

3. The wrongful, unlawful, negligent and careless acts and omissions of the COUNTY OF ERIE, its agents, servants or employees, occurred as follows:

SINCE ARRIVING HERE IN E.C.H.C I HAVE BEEN ABUSED SEVERELY. IVE BEEN BEATEN, HANDCUFFED AND SHAKED DURING TRANSPORTS CAUSING INJURY. ALSO TO NEGLECT FOR MY PHYSICAL NEEDS INCLUDING THE INJURIES CAUSED BY THESE DEPUTIES.

MY HEALTH HAS DETERIORATED SO MUCH CAUSING HOSPITALIZATION.

ALSO MY INJURED KNEES INFECTED AND GETTING WORSE.

MY LIVING CONDITIONS ARE DEPLORABLE DUE TO WATER LEAKAGE AND BLACK MOULD

4. Take further notice that claimant demands payment of his claim, and unless the claim is paid within a reasonable amount of time, and unless the claim is paid within a reasonable amount of time, it is the intention of the claimant to commence a lawsuit against the COUNTY OF ERIE to recover sums claimed as to the damages and injuries sustained by them.

X David A. Novak
CLAIMANT

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.;
CITY OF BUFFALO)

DAVID NOVOA

and says that he is the claimant in the within proceeding and has read the foregoing Notice of Claim and knows the contents of same to be true to his own knowledge, save those matters therein alleged upon information and belief, and as to those matters, the same he believes to be true.

X David Novoa

Sworn to before me this 11
day of Jan 2011

Sylvia M. O'Neal
Notary Public

SYLVIA M. O'NEAL
COMMISSIONER OF DEEDS
in and for the City of Buffalo, Erie County, NY
My Commission Expires Dec 31, 2012



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 13, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Littleton, Amanda & Dwayne v. County of Erie & City of Buffalo</i>
Document Received:	Order to Show Cause
Name of Claimants:	Amanda & Dwayne Littleton 172 Mulberry Street Buffalo, New York 14204
Claimant's attorney:	David P. Feldman, Esq. 69 Delaware Avenue, Suite 711 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209
Email: parkerm3@erie.gov

MMP/dld
Enclosure

At a Special Term, Supreme Court Part 34 thereof, held in and for the County of Erie, this 27 day of June, 2012.

PRESENT: PATRICK H. NEMOYER, J.S.C.
Justice Presiding

This paper received at the Erie County Attorney's Office from Carl Gubler on

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE the 5 day of July, 2012 at 3:30 a.m./p.m.

PAID
CHECK CASH

Justo M. Valde
Assistant County Attorney

JUN 22 2012

AMANDA LITTLETON and
DWAYNE LITTLETON,

Plaintiffs,

ORDER
TO SHOW CAUSE

ERIE COUNTY
CLERK'S OFFICE

-v-

Index No.: 002051/2012

COUNTY OF ERIE, NEW YORK and
CITY OF BUFFALO, NEW YORK

Defendants.

Upon reading and filing the Affidavit of the Plaintiff, AMANDA LITTLETON, sworn to the 22 day of June, 2012, the Affidavit of DAVID P. FELDMAN, ESQ, sworn to the 22 day of June 2012, together with Exhibits appended thereto, and upon all the pleading and proceedings had herein,

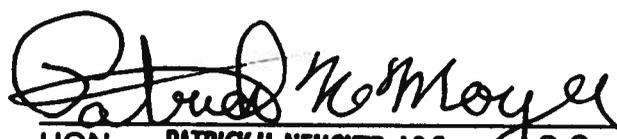
LET, DEFENDANTS COUNTY OF ERIE AND CITY OF BUFFALO SHOW CAUSE, at Special Term of this Court, Part 34 thereof, 50 Delaware Avenue, Buffalo, New York, on the 30 ~~22~~ day of July, 2012, at 9:45 a.m. / 1:30 p.m. of that day or soon there after as counsel can be heard

WHY an Order of this Court should not be made permitting Plaintiffs herein to file Notices of Claim pursuant to General Municipal Law 50e as set forth herein in exhibits appended to the

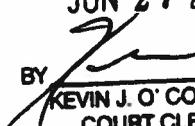
aforesaid affidavits and for such other and further relief as to this Court may seem just and proper.

Sufficient reason appearing therefore, let service of this Order to Show Cause upon Defendants herein be made upon the office of the County Attorney of Erie County, and the office of the Corporation Counsel of the City of Buffalo, and by Certified Mail/Return Receipt Requested, on or before ~~June~~ ^{July} 6, 2012

GRANTED:


HON. PATRICK H. NEMOER, J.S.C. J.S.C.

GRANTED

JUN 27 2012

BY KEVIN J. O'CONNOR
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

AMANDA LITTLETON and
DWAYNE LITTLETON,

Plaintiffs,

-v-

COUNTY OF ERIE, NEW YORK and
CITY OF BUFFALO, NEW YORK

Defendants.

AFFIDAVIT

002051/2012

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

AMANDA LITTLETON, being duly sworn, deposes and says:

1. I reside at 172 Mulberry Street, Buffalo NY 14204.

2. I make this affidavit in support of my application to the Supreme Court for permission for a late filing of Notice of Claim of personal injury against the defendants County of Erie and City of Buffalo pursuant to General Municipal Law 50e.

3. I was injured in an accident which occurred July 7, 2011. The circumstances of the occurrence are as follows:

On that date I had very serious business to transact at the Erie County Office Building [Rath Building] located on Pearl Street in downtown Buffalo. At that time I had

transacted business in the Rath Building left the Rath Building, and proceeded across the sidewalk on the west side of Pearl Street, holding my one month old baby in my arms.

On that day, it appears that the City of Buffalo or the County of Erie [I do not know which] were planting trees in areas provided and left open in the sidewalk between Pearl Street and the entrance to the Rath Building. These openings in the sidewalk were square and were covered by ornamental iron plates which left a round hole in the middle of the square apparently to accommodate the planted tree.

At the particular site where I was injured, no tree had been planted, and there was no guard or cover or warning to keep pedestrians away from the hole in the iron plates which accommodated the planted tree. As I walked from the Rath Building with my baby in my arms, I stepped into the unguarded hole described above, tripped and fell upon my left side, having turned to avoid harming the baby who was in my right arm.

I attempted to report the accident at the time and I was directed to the Erie County Sherriff's Office which was in the Rath Building. A Sherriff's Officer accompanied me to the location where I had fallen, observed the situation and made out a report. A copy of that report is annexed to this affidavit as **Exhibit A**.

4. I did not attend to my left wrist although I was in extreme pain until September 28, 2011. Nor did I file any Notice of Claim against the County of Erie or the City of Buffalo at all. Nor did I consult a lawyer regarding my injury until June 12, 2012. The reason for my failure to file the Notice of Claim or even to get rudimentary treatment for my fractured wrist I will now relate.

5. For six (6) years before my injury, I have lived with my husband Dwayne Littleton and our six children at a house on 17 Furlong Avenue, Cheektowaga, New York. During the year 2010, our landlord informed us that the house was for sale. He offered us the opportunity to purchase it but we were unable to do so. Consequently, when the house was sold, my husband, our six children and I had to move out. This occurred in August 2010.

During the year following our removal from 17 Furlong Avenue, my husband, children and I moved temporary to father's home my husband Dwayne and I spent our time desperately trying to find a place where we could unite our family.

During this crisis, Erie County Welfare stepped into the picture [the people I was visiting on July 7, 2011] they took all my children away from us and put them in foster care.

To make matters worse, my husband was falsely accused of child abuse and was forbidden to visit the children or even to reside with me.

My children were taken away from me on July 1, 2011. This accident occurred July 7, 2011.

In addition, I had given birth to my seventh child, a little boy, one month before the accident.

6. As a result of this family disaster, I was completely absorbed in desperate attempts to reunite my family which had literally been torn to bits before my eyes. The pain in my left wrist was excruciating, and I made an appointment to see a doctor on July 12, 2011, however, on July 12, 2012 I was too busy looking for housing for my family to keep

the appointment. In fact, I did not see a physician concerning my injury until September 28, 2011.

I did not consider that I had any claim for personal injuries during this period of time. My only concern at that time, was to get my six children back and reunite with my husband.

We have finally located a satisfactory residence, my children are returned to my family, and family court is about to revoke the Order which branded my husband as a child abuser.

7. I finally saw Dr. Wen at Buffalo Medical Group on September 28, 2011. He referred me to David Hoffman MD, a neurologist, and finally I was referred to Northtown Orthopedics where I have been treated by Peter L. Gambicorta DO, an orthopedic surgeon.

Dr. Gambicorta has diagnosed the injury to my left wrist as an ulnar styloid fracture. Annexed hereto copy of Dr. Gambicorta's report of April 12, 2012 as **Exhibit B**.

8. Finally, the crushing problem of regaining my family has been solved, and I have received proper medical treatment for my fracture. Consequently, on Tuesday, June 12, 2012 I consulted a lawyer concerning the circumstances of my injury. He has advised me of the requirement to file Notice of Claim within ninety (90) days of the injury and my failure to do so. He has also advised me that this Court in its' sound discretion may permit me to file the required Notice of Claim beyond the ninety (90) day period. I request that this Court permit me to file such notices against the County of Erie and the City of Buffalo.

Amanda Littleton
Amanda Littleton

Sworn to and subscribed before me this
22nd day of June, 2012.

Carol Gruber
Notary Public

Carol Gruber
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 2/14/2014



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 13, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Mapps, Omar v. Det. William; Cooley, U.S.M. Dan Larish, Deputy D. York, Deputy W. Davis, Sheriff Howard, County of Erie & City of Buffalo</i>
Document Received:	Summons & Amended Complaint
Name of Claimant:	Omar T. Mapps (Din #10-B-2509) Greene Correctional Facility P.O. Box 975 Coxsackie, New York 12051-0975
Claimant's attorney:	Claimant is <i>pro se</i>

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle M. Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209
Email: parkerm3@erie.gov

MMP/dld
Enclosure

UNITED STATES DISTRICT COURT
for the
Western District of New York



Omar T Mapps
Plaintiff
v.
Erie County Municipality
Defendant

Civil Action No.
6:11-cv-06586-JWF

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Erie County Municipality
County Office Building
95 Franklin Street
Buffalo NY 14202

2012 JUN 27 PM 2:21
U.S. MARSHALS SERVICES
WESTERN NEW YORK

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:

Omar T Mapps Din# 10B2509
Greene Correctional Facility
Box 975
Coxsackie NY 12051-0975

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: JUN 21 2012

Michael J. Roemer
Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



OMAR T. MAPPS,

Plaintiff,

-v-

11-CV-6586Fe
ORDER

DET. WILLIAM COOLEY, U.S.M. DAN LARISH,
U.S.M. JOHN DOE #1, U.S.M. JOHN DOE #2,
U.S.M. JOHN DOE #3, DEPUTY D. YORK,
DEPUTY WILLIAM DAVIS, TIMOTHY B.
HOWARDS, ERIE COUNTY, and CITY OF
BUFFALO,

Defendants.

Plaintiff, proceeding *pro se*, brings this action under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff was given an opportunity to amend his complaint (Docket No. 5). Plaintiff has now filed an amended complaint (Docket No. 6) which has been screened by the Court with respect to the 28 U.S.C. §§ 1915(e)(2)(B) and 1915A criteria. For the reasons discussed below, the amended complaint may proceed forward against all named defendants except the United States of America.

CLAIMS AGAINST UNITED STATES OF AMERICA

Plaintiff's claims against the United States are without legal foundation and may not proceed forward. In *Bivens, supra*, the Supreme Court recognized that certain circumstances may give rise to a private cause of action against federal officials that is comparable to the statutory cause of action permitted against state officials by 42 U.S.C.A. § 1983. However, *Bivens* claims are available only against federal government officers in their individual capacities. The federal government itself and its agencies are immune from

sult absent a waiver of sovereign immunity, *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). Accordingly, plaintiff's claims against the United States of America are dismissed with prejudice.

JOHN DOE DEFENDANTS

In the amended complaint, plaintiff lists several identified defendants, and three John Doe defendants. Pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d. Cir. 1997)(per curiam), the Court requests that the United States Attorney for the Western District of New York ascertain the full names of the three John Doe defendants plaintiff seeks to sue. The United States Attorney is also requested to provide the addresses where all of the John Doe defendants can currently be served. The United States Attorney need not undertake to defend or indemnify these individuals at this juncture. This Order merely provides a means by which plaintiff may name and properly serve the defendants as instructed by the Second Circuit in *Valentin*.

The United States Attorney for the Western District of New York is requested to produce the information specified above regarding the identities of the John Doe defendants by July 6, 2012. The information should be sent to the Pro Se Office, 2120 U.S. Courthouse, 100 State Street, Rochester, New York 14614. Once this information is provided, plaintiff's amended complaint shall be deemed amended to reflect the full names of the John Doe defendants, summonses shall be issued and the Court shall direct service on those defendants in the same manner as directed below for defendant Larish.

The Clerk of Court shall send a copy of this Order and the amended complaint to the United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202.

SERVICE ON DEFENDANTS

The Clerk of the Court is directed to cause the United States Marshal to serve copies of the Summons, Amended Complaint, and this Order upon the remaining defendants without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor.

Service on defendant Larish:

It is hereby directed that, in addition to the U. S. Marshal service directed above, the Clerk of the Court is also directed pursuant to Rule 4(i) of the Federal Rules of Civil Procedure to send by certified mail the following on behalf of defendant Larish:

- To the Attorney General of the United States, Main Justice Building, 10th and Constitution Avenues N.W., Washington, D.C. 20530, a copy of the Summons, Amended Complaint, and this Order; and

- To the Civil Process Clerk, United States Attorney for the Western District of New York, United States Attorney's Office, USAO/WDNY, 138 Delaware Avenue, Buffalo, New York 14202, a copy of the Summons, Amended Complaint, and this Order.

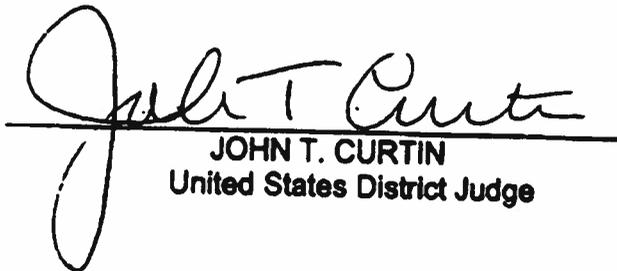
Pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer the Amended Complaint.

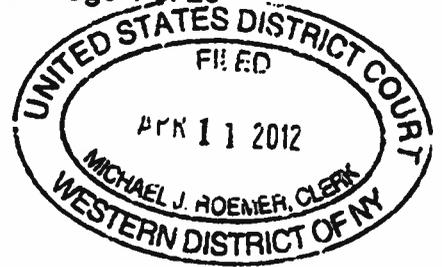
The Clerk of the Court is directed to revise the caption of this action consistent with the caption on this Order.

SO ORDERED.

DATED:

6/6, 2012
Buffalo, New York


JOHN T. CURTIN
United States District Judge



CASE # 6:11 – cv – 06586 – JWF

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**AMENDED COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
and 28 U.S.C. § 1346**

1. CAPTION OF ACTION

A. FULL NAME AND PRISON NUMBER OF PLAINTIFF:

1. OMAR T. MAPPS, DIN: 10-B-2509

B. FULL NAME(S) OF DEFENDANT(S)

- | | |
|------------------------------|-------------------------------|
| 1. Det. William Cooley | 6. Deputy D. York |
| 2. U.S.M. Dan Larish | 7. Deputy William Davis |
| 3. U.S.M. John Doe #1 | 8. Timothy B. Howards |
| 4. U.S.M. John Doe #2 | 9. Erie County (Municipality) |
| 5. U.S.M. John Doe #3 | 10. City of Buffalo |
| 11. United States of America | |

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. §1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

Plaintiff's Information

Name and Prison Number of Plaintiff: Omar T. Mapps, DIN 10-B-2509

**Present Place of Confinement and Address: Greene Correctional Facility, Post Office Box 975,
Coxsackie, New York 12051-0975**

Defendant's Information

Name of Defendant: William Cooley

Official Position of Defendant: Buffalo Police Detective

Defendant is Sued in individual and Official Capacity

Address of Defendant: 74 Franklin Street, Buffalo, New York 14202-4099

Name of Defendant: Dan Larish

Official Position of Defendant: United States Marshal

Defendant is Sued in individual and Official Capacity

Address of Defendant: 50 Delaware Avenue, Buffalo, New York 14202

Name of Defendant: John Doe #1

Official Position of Defendant: United States Marshal

Defendant is Sued in individual and Official Capacity

Address of Defendant: 50 Delaware Avenue, Buffalo, New York 14202

Name of Defendant: John Doe #2

Official Position of Defendant: United States Marshal

Defendant is Sued in individual and Official Capacity

Address of Defendant: 50 Delaware Avenue, Buffalo, New York 14202

Name of Defendant: John Doe #3

Official Position of Defendant: United States Marshal

Defendant is Sued in individual and Official Capacity

Address of Defendant: 50 Delaware Avenue, Buffalo, New York 14202

Name of Defendant: D. York

Official Position of Defendant: Erie County Sheriff

Defendant is Sued in individual and Official Capacity

Address of Defendant: 10 Delaware Avenue, Buffalo, New York 14202

Name of Defendant: William Davis

Official Position of Defendant: Erie County Sheriff

Defendant is Sued in individual and Official Capacity

Address of Defendant: 10 Delaware Avenue, Buffalo, New York 14202

Name of Defendant: Timothy Howards

Official Position of Defendant: Employer of Erie County Sheriffs

Defendant is Sued in individual and Official Capacity

Address of Defendant: 10 Delaware Avenue, Buffalo, New York 14202

Name of Defendant: Erie County (Municipality)

Official Position of Defendant: Municipality responsible for the defendant's not employed by the

United States Marshals

Defendant is Sued in Official Capacity

Address of Defendant: County Office Building, 95 Franklin Street, Buffalo, New York 14202

Name of Defendant: City of Buffalo

Official Position of Defendant: Employer of the City of Buffalo Police Department and

Governmental Force of the City of Buffalo

Defendant is Sued in Official Capacity

Address of Defendant: 65 Niagara Square, 1100 City hall, Buffalo, New York 14202-3379

Name of Defendant: United States of America

Official Position of Defendant: Employer and Governmental Agency of the United States

Marshal Services.

Defendant is sued in Official Capacity

Address of Defendant: Office of Administration, 725 17th Street Northwest, EEOB, Washington,

DC 20503

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuit in State or Federal Court dealing with the same facts involved in this action? **NO**

Do You Want a Jury Trial: **YES**

B. Have you begun any other lawsuits in federal court, which relate to your imprisonment? **NO**

5. STATEMENT OF CLAIM

AS AND FOR A FIRST CAUSE OF ACTION

1. On 7/21/10 at approximately 9:00 a.m., Detective Cooley of the Buffalo Police Department kicked in the door to my apartment located at 63 Box Avenue, Buffalo, New York, to serve a felony warrant.
2. Upon entering my apartment, Det. Cooley assaulted me by punching me under my left eye with the barrel of his gun causing lacerations, loss of sight, dizziness and extreme pain.
3. As I bent over, holding my face in my hands, Det. Cooley struck me in the back of the head with his gun, causing further lacerations, pain and dizziness.
4. The blow knocked me to the floor and Det. Cooley then slammed his knee into my lower back and held my head down and struck me on the right side of my jaw with his gun with such force that two of my upper right teeth were broken to the root, causing extreme pain to my mouth.
5. Det. Cooley then beat me with his gun in my lower back causing sever pain and herniation of the disc in the L-4, L-5 region of my back.

6. I was cuffed and snatched up by my left arm causing extreme pain.

7. I was dragged to my front porch.

8. Shortly afterwards, Rural/Metro Medical Services arrived on the scene in an ambulance and examined and diagnosed my visible injuries.

9. The ambulance staff (Technician J. Pruitt) advised that I should be transported to the nearest emergency room for further examination; however, Det. Cooley refused to allow me to be transported to an emergency room and stated, "This is my call."

10. Det. Cooley instructed the ambulance staff to "just clean him up and put a band-aid on him. He's coming with us."

11. I told the ambulance staff that I was dizzy and in serious pain and asked to be taken to the hospital, but again Det. Cooley refused and again dismissed my plea.

12. Ambulance Technician J. Pruitt, of Rural/Metro Medical Services recommended the proper treatment that I needed and Det. Cooley signed Pruitt's form refusing the recommended treatment and refusing to permit my transportation to the nearest emergency room against the advise of the ambulance staff and my request.

13. Det. Cooley transported me, instead, to the Erie County Holding Center where I was booked, charged and processed in.

14. I sat in the Erie County Holding Center for approximately 14 hours and 43 minutes, suffering pain and on the verge of passing out due to the injuries inflicted upon me by Det. Cooley and the arresting officers.

15. I was charged with obstruction of governmental administration and resisting arrest, however, the charges were later dismissed for "failure to prosecute." Det. Cooley and the arresting officers were required to appear in Buffalo City Court but failed on numerous occasions

to appear. Ultimately, charges were dismissed. Det. Cooley and arresting officers, in direct dereliction of their duties, failed to appear in court further confirming the "Rouge Nature" of these law enforcement officers.

16. The Constitutional basis for this claim under 42 U.S.C. § 1983 is the violation of my Fifth, Eighth and Fourteenth Amendment Rights granted by the United States Constitution, in which the defendant intentionally inflicted pain and suffering through the above listed actions and failure to ensure medical attention was provided following the recommendation made by medical professionals at the scene; intentional infliction of emotional distress; failure to file/fill-out the proper documents; and filing false reports while acting within the scope of his office or employment.

17. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A SECOND CAUSE OF ACTION

18. On the date of 7/21/10 at approximately 9:00 a.m., Dan Larish of the United States Marshal's Service, was negligent in preventing the extreme, unnecessary, violence perpetrated against me by Det. Cooley and for preventing the denial and delay of proper medical treatment when he failed to intercede on my behalf against these violations of my constitutional rights.

19. U.S. Marshal Larish also assisted Det. Cooley with inflicting pain and suffering by stamping on my hand with his boot, further injuring my right middle finger thereby causing extreme pain and suffering.

20. U.S. Marshal Larish knew of my injuries and disregarded a risk by both his actions and his failure to act.

21. I sat in the Erie County Holding Center for approximately 14 hours and 43 minutes, suffering pain and on the verge of passing out due to the injuries inflicted upon me by U.S. Marshal Larish and arresting officers.

22. I was charged with obstruction of governmental administration and resisting arrest, however, the charges were later dismissed for "failure to prosecute." U.S. Marshal Larish and the arresting officers were required to appear in Buffalo City Court but failed on numerous occasions to appear. Ultimately, charges were dismissed. U.S. Marshal Larish and arresting officers, in direct dereliction of their duties, failed to appear in court further confirming the "Rouge Nature" of these law enforcement officers.

23. The Constitutional basis for this claim under 42 U.S.C. § 1983 is the violation of my Fifth, Eighth and Fourteenth Amendment Rights granted by the United States Constitution, in which the defendant intentionally inflicted pain and suffering through the above listed actions and failure to ensure medical attention was provided following the recommendation made by medical professionals at the scene; intentional infliction of emotional distress; and failure to file/fill-out the proper documents reports while acting within the scope of his office or employment.

24. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A THIRD CAUSE OF ACTION

25. On the date of 7/21/10 at approximately 9:00 a.m., John Doe #1, of the United States Marshal's Service, was negligent in preventing the extreme, unnecessary, violence perpetrated against me by Det. Cooley and U.S. Marshal Larish, and for preventing the denial and delay of proper medical treatment when he failed to intercede on my behalf against these violations of my constitutional rights.

26. John Doe #1 knew of my injuries and disregarded a risk by his failure to act.

27. The Constitutional basis for this claim under 42 U.S.C. § 1983 is the violation of my Fifth, Eighth and Fourteenth Amendment Rights granted by the United States Constitution; and intentional infliction of emotional distress reports while acting within the scope of his office or employment.

28. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A FORTH CAUSE OF ACTION

29. On the date of 7/21/10 at approximately 9:00 a.m., John Doe #2, of the United States Marshal's Service, was negligent in preventing the extreme, unnecessary, violence perpetrated against me by Det. Cooley and U.S. Marshal Larish, and for preventing the denial and delay of proper medical treatment when he failed to intercede on my behalf against these violations of my constitutional rights.

30. John Doe #2 knew of my injuries and disregarded a risk by his failure to act.

31. The Constitutional basis for this claim under 42 U.S.C. § 1983 is the violation of my Fifth, Eighth and Fourteenth Amendment Rights granted by the United States Constitution; and intentional infliction of emotional distress reports while acting within the scope of his office or employment.

32. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A FIFTH CAUSE OF ACTION

33. On the date of 7/21/10 at approximately 9:00 a.m., John Doe #3, of the United States Marshal's Service, was negligent in preventing the extreme, unnecessary, violence perpetrated against me by Det. Cooley and U.S. Marshal Larish, and for preventing the denial and delay of proper medical treatment when he failed to intercede on my behalf against these violations of my constitutional rights.

34. John Doe #3 knew of my injuries and disregarded a risk by his failure to act.

35. The Constitutional basis for this claim under 42 U.S.C. § 1983 is the violation of my Fifth, Eighth and Fourteenth Amendment Rights granted by the United States Constitution; and intentional infliction of emotional distress reports while acting within the scope of his office or employment.

36. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A SIXTH CAUSE OF ACTION

37. On 7/21/10 I arrived at the Erie County Holding Center via Det. Cooley and U.S. Marshal Larish.

38. At approximately 10:04 a.m. I was booked by processing Deputy D. York of the Erie County Holding Center with visible wounds to the head and face of a serious nature.

39. I advised Deputy York that I was suffering from serious pain and that I needed medical treatment from the trauma that I suffered at the hands of Det. Cooley and U.S. Marshal Larish.

40. I repeatedly asked Deputy York and others to be seen by medical staff. My requests were refused and ignored.

41. I was compelled by Deputy York and other Deputies to remain lodged in a crowded, dirty holding tank where I was forced to lay on the floor with visibly open wounds, in serious pain for 14 hours and 43 minutes, before finally being initially examined by an Erie County Holding Center physician.

42. After a short examination, the physician stated to me that it was his professional judgment that I should have not been brought to the Erie County Holding Center in such condition and rather should have been immediately taken to a hospital emergency room for serious physical trauma I suffered to my head and face.

43. At this juncture I was taken back downstairs and transported via police cruiser to Buffalo General Hospital where I received a number of x-rays, Magnetic Resonance Imaging (M.R.I.), medical stapling to wounds and narcotic pain medication. I was admitted at 12:41 a.m. and released at 3:19 a.m. of 7/22/10 with orders to be followed up on.

44. Follow-up diagnosis has determined that due to my injuries I have serious back and spinal cord injuries of permanent and progressive nature. Injuries include herniation to my lower lumbar area L-4 and L-5 vertebrate level. I will need lifelong treatment for these injuries. I also suffered two broken teeth that had to be surgically extracted.

45. Deputy York failed to call or notify medical staff to advise them of my injuries, instead, Deputy York placed me in a crowded, dirty holding tank where I had to lay on the floor with open wounds that presented an opportunity to infection while having major pain and black-out spells.

46. Deputy York failed in his duty to ensure that Det. Cooley and/or U.S. Marshal Larish properly filled out form P-1261, a form required to be filled out by the arresting officer(s) when the arrestee is injured.

47. Deputy York failed to file a report concerning my condition or to report my injuries to a higher-ranking officer/supervisor.

48. Deputy York was aware of my injuries and disregarded a risk to my health and safety where a reasonable person with proper training would not have done otherwise.

49. Deputy York's actions show neglect and deliberate indifference to my injuries/wellbeing, and a lack of training.

50. The constitutional basis for this claim under 42 U.S.C. § 1983 is violation of Fifth, Eight and Fourteenth Amendment Rights granted by the United States Constitution; and intentional infliction of emotional distress reports while acting within the scope of his office or employment.

51. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A SEVENTH CAUSE OF ACTION

52. On 7/21/10 I arrived at the Erie County Holding Center via Det. Cooley and U.S. Marshal Larish.

53. At approximately 10:25 a.m. I was fingerprinted and photographed by Deputy William Davis of the Erie County Holding Center with visible wounds to the head and face that were of a serious nature.

54. I advised Deputy Davis that I was suffering from serious pain and that I needed medical treatment.

55. I repeatedly asked Deputy Davis and others to be seen by medical staff. My requests were refused and ignored.

56. I was compelled by Deputy Davis and other Deputies to remain lodged in a crowded, dirty holding tank where I was forced to lay on the floor with visibly open wounds, in serious pain for 14 hours and 43 minutes, before finally being initially examined by an Erie County holding Center physician.

57. Deputy Davis failed to call or notify medical staff to advise them of my injuries, instead, Deputy Davis placed me in a crowded, dirty holding tank where I had to lay on the floor with open wounds that presented an opportunity to infection while having major pain and black-out spells.

58. Deputy Davis failed to file a report concerning my condition or to report my injuries to a higher-ranking officer/supervisor.

59. Deputy Davis was aware of my injuries and disregarded a risk to my health and safety where a reasonable person with proper training would not have done otherwise.

60. Deputy Davis failed to intervene to ensure that I was provided proper medical treatment despite Deputy York's refusal to permit me to be seen by medical staff at the Erie County Holding Center.

61. Deputy Davis' actions show neglect and deliberate indifference to my injuries/wellbeing, and a lack of training.

62. The constitutional basis for this claim under 42 U.S.C. § 1983 is violation of Fifth, Eight and Fourteenth Amendment Rights granted by the United States Constitution; and intentional infliction of emotional distress reports while acting within the scope of his office or employment.

63. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A EIGHTH CAUSE OF ACTION

64. On 7/21/10, Timothy B. Howard, Supervisor of the Erie County Holding Center, located at 10 (Ten) Delaware Avenue, in the City of Buffalo, County of Erie, and State of New York, was negligent in his duty to oversee said law enforcement agency and in his duty to ensure a safe environment in said agency exists that deters incidents of deliberate indifference and in his duty to ensure that said agency comply with lawful requirements of seeing to it that injured arrestee's are promptly afforded the proper medical treatment that medical professional recommend to prevent unnecessary pain, suffering and permanent injury.

65. The act of negligence and deliberate indifference also points to Sheriff Timothy B. Howards due to his having failed to train or provide proper training to employees in order to

ensure that arrestees are provided proper care to prevent pain and suffering without delay or denial of medical treatment.

66. The acts of negligence and deliberate indifference by Sheriff Timothy B. Howards resulted in the injuries to the plaintiff.

67. The constitutional basis for this claim under 42 U.S.C. § 1983 is violation of my Fifth, Eight and Fourteenth Amendment Rights granted by the United States Constitution; and intentional infliction of emotional distress reports while acting within the scope of his office or employment.

68. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A NINTH CAUSE OF ACTION

69. On 7/21/10 the Erie County Holding Center, located at 10 (ten) Delaware Avenue, in the City of Buffalo, and the State of New York, is under the authority and control of the County of Erie, New York.

70. Erie County Holding Center is the place of employment for defendant's Timothy B. Howards, Deputy D. York, and Deputy Williams Davis, at the time of the alleged acts, and whom are also named in this lawsuit brought pursuant to 42 U.S.C. §1983.

71. Erie County, having corporate status and/or power of self-government, failed in its duty to ensure that official written and/or unwritten customs or policies were not implemented that would encourage the defendant's indicated above to not uphold the rules and regulations of said municipal governmental force.

72. Erie County allowed official written and/or unwritten custom or policy that prevented it's employees to receive proper training, supervision and to prevent employees at the Erie County Holding Center from engaging in acts of denial and delay of medical treatment and willful depravities of state and federal constitutional rights of pre-trial detainees; including the right to be free from cruel and unusual punishment.

73. The written and/or unwritten customs and policies of the Erie County Holding Center, which as stated before is under the authority and control of the Erie County Municipality, resulted in negligence and deliberate indifference in the foregoing regards which resulted in injury to the plaintiff.

74. The constitutional basis for this claim is under 42 U.S.C. §1983 is the Fifth, Eighth and Fourteenth Amendments to the United States Constitution; and intentional infliction of emotional distress while acting within the scope of his office or employment.

75. The alleged written and/or unwritten customs and policies of Erie County and the Erie County Holding Center was to delay treatment to any pre-trial detainee in order to process them into the holding center so that there would be no incomplete paperwork that would have resulted from the plaintiff being transported to medical care prior to in-processing and classification. Such caused plaintiff to be subjected to pain and suffering with the possibility of infection due to open wounds, and as such, this has violated the Plaintiff's constitutional rights as set forth above.

76. The relief I am seeking for this claim is an amount that exceeds the jurisdictional limit of all lower and inferior courts. The total amount of damage cannot be fully quantified due to continued medical treatment.

AS AND FOR A TENTH CAUSE OF ACTION

77. On 7/21/10, the City of Buffalo, New York, being the governmental force behind the law enforcement agency, the Buffalo City Police, was negligent in its duty to oversee said law enforcement agency and in its duty to ensure that an environment in said agency exists that deters incidents of police brutality when executing an arrest or warrant, and in its duty to ensure that said agency complies with lawful requirements of seeing to it that injured arrestees are promptly afforded the medical treatment that medical professionals recommended to prevent unnecessary pain, suffering and permanent injury.

78. The acts of negligence by the City of Buffalo resulted in the injury to the plaintiff.

79. The constitutional basis for this claim under 42 U.S.C. § 1983 is violation of my Fifth, Eighth, and Fourteenth Amendment Rights granted by the United States Constitution; and intentional infliction of emotional distress while acting within the scope of his office or employment.

80. The relief I am seeking for this claim is in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

AS AND FOR A ELEVENTH CAUSE OF ACTION

81. On 7/21/10, the United States, being the governmental force behind the law enforcement agency, the United States Marshals, was negligent in its duty to oversee said law enforcement agency and in its duty to ensure that an environment in said agency exists that deters incidents of police brutality when executing an arrest or warrant, and in its duty to ensure that said agency complies with lawful requirements of seeing to it that injured arrestees are promptly afforded the

medical treatment that medical professionals recommended to prevent unnecessary pain, suffering and permanent injury.

82. The acts of negligence by the United States Marshals, under the corporation sovereign of the United States, resulted in the injury to the plaintiff.

83. The constitutional basis for this claim under 28 U.S.C. § 1346 ("Federal Tort Claims Act") is the intentional infliction of unnecessary pain, suffering and permanent resulting of failing to intervening when the defendant's were made aware that the Plaintiff's injuries required treatment by a medical facility (hospital) emergency room; and intentional infliction of emotional distress while acting within the scope of their office or employment.

84. The relief I am seeking for this claim in the amount that exceeds the jurisdictional limits of all lower and inferior courts. The total amount of damages cannot be fully quantified due to continued medical treatment.

6. RELIEF SOUGHT

85. The relief that the Plaintiff seeks is compensatory and punitive damages against the named defendants, both individually and officially, for the violations of constitutional rights enumerated herein; for the wanton infliction of sever pain, physical injury, emotional trauma, and lasting permanent injuries and defects that have and will continue to reduce the quality of life and opportunity for future progress, development and enjoyment; and, to punish the said defendants for their misconduct in order to deter such similar conduct in the future.

86. Plaintiff also seeks injunctive relief against the defendants: Erie County, and the City of Buffalo, enjoining such entities to immediately develop a publicly accessible guidelines for the training and supervision regarding, and the prevention of unnecessary use of force by law

enforcement personnel, correctional staff, and enjoining such entities to enact mandatory reporting rules and regulation for its employees, agents and persons acting on its behalf wherein any such person under its employ who witness a violation of a detainee's constitutional or state-law rights must intercede to prohibit such violations and must report such violations to an immediate supervisor immediately with violations punishable by termination of employment.

87. The amount of damages cannot be ascertained at present and will be developed due to ongoing medical evaluation/treatment.

7. EXHAUSTION OF ADMINISTRATIVE REMEDIES

88. Plaintiff is unaware of any administrative remedies available to him as he was provided treatment prior to being placed in general population. He reported his injuries and suffering to any and all available staff and the defendants throughout his ordeal.

WHEREFORE, the Plaintiff humbly and respectfully demands judgment against each of the defendants as specified above, prays for an award of costs and attorney fees, and for such other and further relief this Court may deem just, proper and equitable.

I, Omar T. Mapps, hereby declare under the penalties of perjury that the forgoing statements are true and correct to the best of my knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters I believe them to be true.

Executed this 08th Day of April 2012.



Omar T. Mapps, # 10-B-2509
Plaintiff, Pro Se
Greene Correctional Facility
Post Office Box 975
Coxsackie, New York 12051-0975



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 26, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>O'Neil, Caitlin E. v. Ward, Dennis E. and Mohr, Ralph M., Commissioners of and Constituting the Erie County Board of Elections, and Hasiotis, George F.</i>
Document Received:	Order to Show Cause
Name of Claimant:	Caitlin E. O'Neil 404 Potomac Avenue Buffalo, New York 14213
Claimant's attorney:	Jeffrey E. Marion, Esq. The Williamsville Law Center Building 17 Beresford Court Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle M. Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209

MMP:dld
Enclosure

This Paper received at
the Erie County Board of
Elections from Jason Hurley
on the 26th Day of July, 2012
at 10:40am
Beth Buchicchio

At a Special Term of the Supreme
Court held in and for the County of
Erie, at the Courthouse in the City of
Buffalo, New York on the 25 day
of July, 2012.

Hon. Timothy J. Walker, J.C.C.
PRESENT: HON. Acting Supreme Court Justice
Justice Presiding

FILED
ACTIONS & PROCEEDINGS

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JUL 25 2012

In the Matter of the Application of

ERIE COUNTY
CLERK'S OFFICE

CAITLIN E. O'NEIL

Petitioner-Objector,

ORDER TO SHOW CAUSE

-vs-

INDEX NO. 2012/ 2542

DENNIS E. WARD and RALPH M. MOHR
Commissioners of and Constituting the
ERIE COUNTY BOARD OF ELECTIONS;

and,

IASJ HON Hon. Timothy J. Walker, J.C.C.
Acting Supreme Court Justice

GEORGE F. HASIOTIS,

Respondent-Candidate;

PAID NO. FEE
07/25/2012 13:06:10
ERIE COUNTY CLERK
CPT # 12115654
2012002542

**Upon the Verified Petition of the Petitioner, Caitlin E. O'Neil, dated the 24th day
of July, 2012, and upon the general and specific objections incorporated therein, and**

DUE DELIBERATION having been had, it is hereby,

ORDERED, that the all the **RESPONDENTS** or counsel therefore,

SHOW CAUSE BEFORE THIS COURT, at a Special Term, Supreme Court, to
be held in and for the County of Erie, State of New York, in the Courthouse in the City of

ERIE CO CLERK JUL 25 12 13:06:10

Buffalo, at Part 20 thereof, on the 31st day of July, 2012 at 11⁰⁰ o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard,

Why an order pursuant to Election Law, Section 16-102 should not be made and entered in this action, granting the following relief:

1. Invalidating the Democratic Party designating petition of the Respondent-Candidate George F. Hasiotis, as a candidate in the September 13, 2012 primary election for: the public office of County Comptroller for the County of Erie and State of New York; and,
2. Directing the Respondent Erie County Board of Elections to remove the name of Respondent George F. Hasiotis as a designated candidate of the Democratic Party for that public office for said September 13, 2012 primary election; and,
3. Granting such other, further and different relief as this Court may deem just and proper.

SERVICE OF PROCESS:

And it is further,

ORDERED, that service of a conformed copy of this Order to Show Cause and Verified Petition (but not a copy of the objections) thereto, upon the Respondents herein, shall be deemed good and sufficient if accomplished as follows:

1. Service upon the Respondent Erie County Board of Elections:

By the delivery of a copy thereof to a person authorized to accept service at the offices of the Erie County Board of Elections located at 134 W. Eagle Street Buffalo, NY 14202.

2. Service upon the Respondent Candidate George F. Hasiotis:

By any of the methods for service upon a natural person, as provided for in CPLR 308.

That such service upon the Respondents Erie County Board of Elections and George F. Hasiotis shall be completed no later than 11:59 P.M. on the 26th day of July, 2012; and it is further,

ORDERED, that the Respondent Erie County Board of Elections shall provide to the Court on or before the return date hereof, the original designating petition of the Respondent George F. Hasiotis, the Board's entire record, including but not limited to, all papers filed with the Board, together with a copy of the decision of such Board on the objections filed against the subject designating petition; and it is further,

ORDERED, that the Respondents (or their counsel) shall submit responding papers to the Court and to Petitioner's counsel, no later than 5:00 P.M. on the 30th day of July, 2012.

July 25, 2012

Hon. Timothy J. Walker

**JUSTICE OF THE SUPREME COURT
COUNTY OF ERIE**

GRANTED

JUL 25 2012

BY

S
JOHN H. GARBO, JR.
COURT CLERK

GRANTED:

Court Clerk

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of the Application of

CAITLIN E. O'NEIL

Petitioner-Objector,

-vs-

VERIFIED PETITION

DENNIS E. WARD and RALPH M. MOHR
Commissioners of and Constituting the
ERIE COUNTY BOARD OF ELECTIONS;

INDEX NO. 2012/ _____

and,

GEORGE F. HASIOTIS,

Respondent-Candidate;

TO THE SUPREME COURT, ERIE COUNTY:

Petitioner Caitlin E. O'Neil, as and for her Verified Petition, by her attorney Jeffrey E. Marion, Esq., does allege:

1. She is the Petitioner in this proceeding under Election Law, Section 16-102 which seeks to invalidate the Democratic Party designating petition of the Respondent, George F. Hasiotis, for the public office of County Comptroller for the County of Erie and State of New York, for the September 13, 2012 Democratic Party primary election.

I. PARTIES:

1. Petitioner Caitlin E. O'Neil:

2. Petitioner Caitlin E. O'Neil is a registered voter in the County of Erie and an enrolled member of the Democratic Party, who is entitled to vote for the public office of Erie County Comptroller and who resides at 404 Potomac Avenue, Buffalo, NY 14213.

3. In addition, she is an enrolled member of the Democratic Party, and a qualified person under Election Law, Section 6-154, who has duly filed objections with the Erie County Board of Elections against the Democratic Party designating petition of the Respondent candidate, George F. Hasiotis, for the public office of Erie County Comptroller.

2. Respondents:

4. **DENNIS E. WARD and RALPH M. MOHR** are the Commissioners of and constitute the **ERIE COUNTY BOARD OF ELECTIONS** (hereinafter the "County Board"), which is the governmental administrative body with which the subject designating petition was filed by the Respondent candidate.

5. In addition, the general and specific objections by the Petitioner against such designating petition were also filed with such Board and which body

will ultimately rule upon the validity of the objections filed by such Petitioner, at the administrative level.

6. The offices of said Erie County Board of Elections are located at 134 W. Eagle Street, Buffalo, New York 14202.

2. Respondent Candidate George F. Hasiotis:

7. Respondent, George F. Hasiotis, is a candidate for the Democratic Party nomination for the public office of Erie County Comptroller, at the September 13, 2012 Primary Election, and who was purportedly designated for such office by the subject designating petition with such document having been filed in the offices of the Respondent County Board.

10. Respondent resides at 5 Lincoln Woods Lane, Buffalo, New York 14222.

II. PETITIONERS' STANDING:

11. Petitioner has previously timely filed with the County Board, general objections (on or about the 18th day of July, 2012) and specific objections (on or about the 24th day of July, 2012) with the County Board, as required by Election Law, Section 6-154.

12. By virtue of her status then as a voter qualified to vote for the office of Erie County Comptroller, and being an enrolled member of the Democratic Party residing in the County of Erie, the Petitioner has standing to commence this invalidation proceeding under the provisions of Election Law, Section 16-102.

III. JURISDICTION

13. The appropriate procedure for the invalidation of election-related documents such as the subject designating petition of the Respondent candidate George F. Hasiotis is an invalidation proceeding under Election Law, Section 16-102.

14. Personal jurisdiction has been acquired by the timely commencement of this proceeding by the Respondent within fourteen (14) days of the last date for the filing of designating petitioners with the Board – which for this year was Thursday, July 14, 2012 – as required by Election Law, Section 16-102.

IV. NECESSARY PARTIES

15. All individuals or entities who have an interest in the outcome of the requested invalidation or who might be inequitably affected thereby have been made parties to this proceeding.

V. VENUE:

16. This matter is properly brought in Erie County, as all of the parties are residents thereof and the challenged document was all filed in the Erie County Board of Elections, as provided for by CPLR Section 506.

VI. BACKGROUND

17. This is a proceeding brought by the Petitioner pursuant to Election Law, Section 16-102, which seeks to invalidate a certain document – here, the Democratic Party designating petition of the Respondent George Hasiotis – which was filed with the Respondent Erie County Board of Elections.

18. Such designating petition purports to contain 2536 valid signatures.

19. Election Law, Section 6-136 (2)(d) requires that a designating petition for Erie County Comptroller contain 2000 valid signatures.

20. As contained in the specific objections filed with the Board, based upon the numerous ground contained therein, it is the reasonable belief of the Petitioner-Objector that approximately 946 of such signatures are invalid, leaving only 1590 valid signatures.

VIII. BASES FOR INVALIDATION:

21. The largest objection deals with approximately 410 signatures allegedly obtained by one Louis Turchiarelli, who purports to be a Commissioner of Deeds for the City of Tonawanda.

22. Petitioner contends that he was unable to legally witness those signatures (all done outside the City of Tonawanda) because:

1) He was not statutorially qualified to be a commissioner of deeds for the City of Tonawanda being neither a resident thereof or have a place of business therein. Executive Law, Section 139.

2) Regardless, such signatures being witnessed outside of the City of Tonawanda, are invalid as beyond the jurisdiction of

such a commissioner of deeds. (Shuboney v. Monroe County Board of Elections, 297 A.D.2d. 462)

23. A second large objection involves numerous pages on which the witness, James Montour, failed to include a proper residence address, thereby invalidating an additional 134 signatures.

24. The remaining objections in various categories are described on the last page of the specific objections, in the Appendix, and are noted on the worksheets for each page of the subject petition and for the line on each such page, which amount to an additional 402 invalid signatures.

IX. CONCLUSION

25). Thus, the Democratic Party designating petition of the Respondent candidate, George F. Hasiotis, for the public office of Erie County Comptroller, for the September 13, 2012 primary election are void and must be invalidated.

26). The Respondent Erie County Board of Elections should be directed to remove the name of the Respondent candidate George F. Hasiotis from the ballot for the September 13, 2102 primary election.

X. DECISION OF BOARD OF ELECTIONS:

27). As of the date of the commencement of this proceeding, the Petitioner has not yet received notice of the decision on the objections filed with the Respondent Erie County Board of Elections.

28). This anticipatory invalidation proceeding is required to be brought before such decision is made by the Board in order to comply with the strict time requirements of Election Law, Section 16-102.

XI. SERVICE OF RESPONDING PAPERS

29). Petitioner requests that the answering papers be served upon Petitioner's counsel at least one (1) day prior to the return date hereof.

30). No previous request for the relief sought herein has been made to any other Court.

WHEREFORE, Petitioners request that this Court enter an order granting the following relief, pursuant to Election Law, Section 16-102:

1. Invalidating the Democratic Party designating petition of the Respondent-Candidate George F. Hasiotis, as a candidate in the September 13, 2012 primary election for: the public office of County Comptroller for the County of

Erie and State of New York; and,

2. Directing the Respondent Erie County Board of Elections to remove the name of Respondent George F. Hasiotis as a designated candidate of the Democratic Party for that public office for said September 13, 2012 primary election; and,
3. Granting such other, further and different relief as this Court may deem just and proper.

DATED: July 24, 2012
Buffalo, New York



Jeffrey E. Marion, Esq.
17 Beresford Ct.
Williamsville, NY 14221
(716) 565-2000

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

Caitlin E. O'Neil, being duly sworn deposes and says that (s)he is a Petitioner in this proceeding; that (s)he has read the foregoing PETITION and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters (s)he believes them to be true.



Caitlin E. O'Neil

Sworn to before me this 24th
day of July, 2012



Jason Huckey

Notary Jason Huckey
Commissioner of Deeds, in and for
the City of Buffalo, County of Erie,
State of New York
My commission expires 12/31/12



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 27, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name: *Parobek, Stephanie and Ryan, Sean M.
v. Mascia, Joseph A. and
Commissioners Dennis E. Ward and
Ralph M. Mohr, Constituting the Board
of Elections of the County of Erie*

Document Received: Order to Show Cause

Name of Claimants: Stephanie Parobek
142 Lexington Avenue
Buffalo, New York 14222

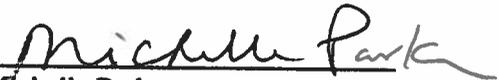
Sean M. Ryan
47 Windsor Avenue
Buffalo, New York 14209

Claimant's attorney: Sean E. Cooney, Esq.
Cantor, Lukasik, Dolce &
Panepinto, P.C.
1600 Main Place Tower
350 Main Street
Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle Parker

MMP:dld

Enclosures

cc: Michael A. Siragusa, Erie County Attorney

AT A TERM OF THE SUPREME COURT FO
THE STATE OF NEW YORK, COUNTY OF
ERIE ON THE 26TH DAY OF JULY, 2012

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In The Matter of
STEPHANIE PAROBK and
SEAN M. RYAN

Petitioners,

v.

JOSEPH A. MASCIA, and
COMMISSIONERS DENNIS E. WARD AND
RALPH M. MOHR, constituting THE
BOARD OF ELECTIONS OF THE
COUNTY OF ERIE

Respondents.

Signature of BCE Employee
Beth Hochmeier
At 3:25
On the 26th day of July 2012
From Chris Bergatti
Erie County Clerk's Office
ORDER TO SHOW CAUSE
This paper received at the
INDEX NO. 2012 - 02565

FILED
ACTIONS & PROCEEDINGS

JUL 26 2012

ERIE COUNTY
CLERK'S OFFICE

PAID
CASH

JUL 26 2012

ERIE COUNTY
CLERK'S OFFICE

Upon the annexed petition of Stephanie Parobek and Sean M. Ryan, verified on July 25,
2012 it is hereby

ORDERED that respondents herein show cause before one of the Justices of this Court
Part 4, third floor, 92 Franklin St
at a Special Term for the County of Erie thereof to be held in and at Buffalo, New York on

July 31, 2012 at 9:30 o'clock in the forenoon of that date for the proffer of testimony
or other evidence, or soon thereafter as counsel can be heard, why an Order should not be made
invalidating and declaring null and void the Democratic designating petitions filed on behalf of
Joseph A. Mascia, purporting to nominate him as candidate for the office of New York State
Assembly Member, District 149 and why the Board of Elections of the County of Erie, New
York, should not be enjoined and restrained from printing and placing, upon voting machines
used that the election to be held on September 13, 2012, the name of the respondent candidate,
and for such other and further relief as the Court deems just and proper, and it is hereby

ERIE CO BOE JUL 26 12 M325

ORDERED That the Board of Elections of the County of Erie, New York, shall produce on a return date of this Order to Show Cause and on the argument thereof, the official permanent personal registration poll record signature copy for the City of Buffalo, New York or such portion or excerpt thereof as the parties hereto or their attorneys may request; the alleged designating petitions of Joseph A. Mascia; all objections and specifications thereto; certificates of declinations; substitutions; and all reports and papers pertaining thereto, all designating petitions filed for the office of New York State Assembly District 149 for the examination of the Court, and it is hereby

ORDERED that leave is hereby granted to the petitioners to amend their pleadings as may be necessary, and it is hereby

ORDERED that leave is hereby granted to the petitioners to submit on the date set for the hearing of this matter additional witnesses, exhibits, proofs, and other evidence as may be necessary, realign the parties hereto, and to amend the petition herein as may be required by further investigation of the facts and/or the unavailability of facts at the time of this order, and it is hereby

ORDERED that service of this Order and the papers upon which it was granted to be deemed due, timely and sufficient if made as follows:

- a) Upon the respondent members of the Board of Elections of the County of Erie, New York, at 134 W. Eagle Street, Buffalo, NY 14202 on or before July 26, 2012 by delivering to and leaving a true copy of this Order and of the annexed papers with one of the employees authorized to accept service, commissioners, members, or the Chief Clerk, or Deputy Chief Clerk of the Board, or such other person as may be designated by the Board to receive service.

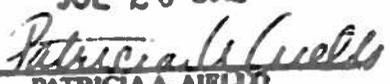
b) Upon the respondent, Joseph A. Mascia, on or before July 26, 2012, by delivering to and leaving with him personally a copy of this Order and the annexed papers or by delivering this Order and the annexed papers to a person of suitable age and discretion at 47 Marine Drive Apartment 4E, Buffalo, NY 14202; ~~or alternatively at the option of the petitioners, upon the respondent, Joseph A. Mascia, by enclosing the same in a securely sealed and post paid wrapper addressed to the Respondent, Joseph A. Mascia 47 Marine Drive Apartment 4E, Buffalo, NY 14202, via Certified Mail and depositing same with an office or depository of the United States Postal Service on or before July 26, 2012; or alternatively, at the option of the petitioners, service may be made upon the Respondent, Joseph A. Mascia, or by such substituted service as authorized by CPLR §308.~~

JAG | *R2*

DATED: Buffalo, New York
July 26, 2012


Hon. JOSEPH R. GLOWNIA J.S.C.

GRANTED:

GRANTED
JUL 26 2012
BY: 
PATRICIA A. AIELLO
COURT CLERK

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

In The Matter of

**STEPHANIE PAROBEK and
SEAN M. RYAN,**

VERIFIED PETITION

INDEX NO.

Petitioners,

v.

**JOSEPH A. MASCIA, and
COMMISSIONERS DENNIS E. WARD AND RALPH M. MOHR,
constituting
THE BOARD OF ELECTIONS OF THE COUNTY OF ERIE,
Respondents.**

The petition of Stephanie Parobek and Sean M. Ryan, by their attorneys Cantor, Dolce, and Panepinto, P.C., do allege:

1. This proceeding is brought pursuant to the authority of the Election Law, Section 16-102(2), and seeks to invalidate a designating petition of the Respondent, Joseph A. Mascia (hereinafter known as "Mascia") which was filed with the Respondent Erie County Board of Elections (hereinafter "Board").

2. Petitioner, Stephanie Parobek, is a duly registered voter and enrolled member of the Democratic Party, who resides at 142 Lexington Avenue, Buffalo, NY 14222, which is located within the New York State Assembly 149th District.

3. Petitioner, Sean M. Ryan, is a duly registered voter and enrolled member of the Democratic Party who resides at 47 Windsor Avenue, Buffalo, New York 14209, which is located within the New York State Assembly 149th District.

4. Pursuant to Election Law, Section 6-154, Petitioner, Stephanie Parobek, did, on July 18, 2012, duly file with the Board a General Objection to the Democratic designating petition of the Respondent Mascia. A copy of the General Objection is incorporated herein and annexed hereto as **Exhibit A**.

5. Thereafter, on July 24, 2012, Petitioner Parobek did duly file specific objections to the same designating petition with the Board. A copy of the Specific Objections are incorporated herein and annexed hereto as **Exhibit B**.

6. Petitioner Parobek is therefore a qualified objector pursuant to Election Law, Section 16-102, and has standing to commence this proceeding to invalidate the subject designating petition.

7. Petitioner Ryan filed Democratic Designating Petitions for the New York State Assembly District 149 on or about July 11, 2012 and is therefore a candidate in the Democratic primary election to be held on September 13, 2012, for that party's nomination for the public office of New York State Assembly Member, District 149. Petitioner Ryan is an aggrieved candidate pursuant to Election Law section 16-102 and has standing to commence this proceeding to invalidate the subject designating petition.

8. Respondent Mascia, who resides at 47 Marine Drive, Apartment 4E, Buffalo, New York, is purportedly a candidate in the Democratic primary election to be held on September 13, 2012, for that party's nomination for the public office of New York State Assembly Member, District 149.

9. Respondent Erie County Board of Elections is the body with which the subject designating petition was properly filed and is the body with which objections thereto are filed.

10. As of the date of the filing of this proceeding, the Board has not yet acted upon the

objections filed by Petitioner Parobek.

11. Under the provisions of Election Law, Section 16-102(2), this proceeding to invalidate the Respondent Mascia's designating petition must be taken within the two (2) week period of limitations after the last day to file designating petitions. The last day to commence this proceeding is therefore July 26, 2012.

ISSUES PRESENTED

Signatures

12. Election Law, Section 6-136 (2)(f) requires that a designating petition for the office of New York State Assembly Member contain a minimum of five hundred valid signatures of enrolled Democrats, who reside within that political subdivision.

13. As can be seen from the attached general and specific objections, which are incorporated by reference into this petition and made a part hereof, the designating petition filed with the Board is invalid as having insufficient number of valid signatures.

14. Based solely on the objections, it appears that the designating petition of the Respondent Mascia contains only 153 valid signatures.

Simultaneously Seeking Two Offices

15. Respondent Mascia currently resides at a unit administered by the Buffalo Municipal Housing Authority (BMHA), namely 47 Marine Drive Apartment 4E.

16. As a resident of such a unit, administered by BMHA, Mascia is eligible to serve as a Tenant Member Commissioner (hereinafter Commissioner) of the BMHA pursuant to the BMHA bylaws, annexed hereto as Exhibit C.

17. Petitions for BMHA were circulated for an election held between June 12-15, 2012 (see Exhibit C at 2). Mascia petitioned signatures from residents of BMHA administered

units in order to have his name placed on a ballot to elect him Commissioner of the BMHA. Respondent Mascia was elected as a Commissioner and on July 24, 2012 signed two oath cards pursuant to that position. A copy of the oath cards are annexed hereto as **Exhibit D**.

18. Before BMHA elections were conducted, Mascia began circulating petitions to have his name included on the New York State Assembly 149 District primary ballot. A copy of the petitions are incorporated herein and annexed hereto as **Exhibit E**.

19. Mascia did not assume his position as Commissioner until after filing his petitions seeking the Democratic Party's nomination for the public office of New York State Assembly Member, District 149 (compare Exhibit D and Exhibit E).

19. Due to Mascia's action of circulating petitions for New York State Assembly District 149 before the conclusion of the BMHA voting on June 15 he simultaneously ran for two offices.

20. Those individuals who signed Mascia's petition to include him on the ballot for the New York State Assembly District 149 were precluded from signing other petitions. Further, those who voted for Mascia during the BMHA election were precluded from voting for another individual. Both actions deprived individuals of the opportunity to support a candidate who could accept both positions without creating a conflict.

21. Serving as both an Assemblymember and as a Commission of BMHA would create a conflict which would necessitate the resignation of one of the positions. See Article III, Section 7 of the New York State Constitution which provides: "If a member of the legislature be elected to congress, or appointed to any office, civil or military, under the government of the United States, the state of New York, or under any city government except as a member of the national guard or naval militia of the state, or of the reserve forces of the United States, his or her acceptance thereof shall vacate his or her seat in the legislature, providing, however, that a member of the legislature may be appointed commissioner of deeds or to any office in which he

or she shall receive no compensation.” NY Const Art III, § 7. The Court of Appeals has interpreted this prohibition very broadly to include any placing in civil office or public trust pertaining to the exercise of the powers and authority of the civil government of the State, not reasonably incidental to the performance of duties of a member of the Legislature. People v. Tremaine, 252 N.Y. 27, 40 (1929).

20. An individual is precluded from seeking two offices simultaneously (see generally Matter of Lufty v Gangemi, 35 NY2d 179 [1974]; Matter of Lois Phillips v Suffolk County Board of Elections, 21 AD3d 509 [2005]). Such an action is “fraudulent and deceptive” and “injurious to the rights of the electorate” (see Matter of Lufty, 35 NY2d at 182). As such, such an individual should have his name removed from both ballots (see id at 182; see also Matter of Daniel E. Lachanski v Schenectady County Board of Elections, 10 AD3d 467 [2004]).

Hatch Act

22. Upon information and belief Mascia's position as a Commissioner of the BMHA constitutes his only source of employment. For his service he receives \$2,000 annually (see New York Public Housing Law § 32); this constitutes the sole source of earned income for Mascia.

23. BMHA is funded by the US Government (see HUDNo.2011-03-18; BMHA Awarded \$9.4M from HUD, Buffalo Business First, July 12, 2011).

24. The Hatch Act (5 U.S.C. § 1501 *et seq*) restricts the political activity of individuals principally employed by state or local executive agencies who work in connection with programs financed in whole or in part by federal loans or grants (see 5 U.S.C. § 1502).

25. The Hatch Act employees whose principal employment is with a federally financed state or local agency (5 U.S.C. § 1501).

26. A person covered by the Hatch Act may not be a candidate for public office in a partisan election (5 USC § 1501).

27. Mascia's position as a Commissioner of the BMHA precludes him, pursuant to the Hatch Act, from running in a partisan election.

28. The Respondent Board should be enjoined from placing and directed to strike the name of the Respondent Mascia from all voting machines and paper ballots to be used at the September 13, 2012 Democratic primary election.

29. No previous request for the relief sought herein has been made to any Court. WHEREFORE, the Petitioner requests that the Court grant an Order, pursuant to its authority under Election Law, Section 16-100 (1):

- a) Invalidating the designating petition of the Respondent Mascia as mentioned above; and
- b) Enjoining and/or directing the Erie County Board of Elections from placing and/or removing his name from all machines and paper ballots for the September 13, 2012 Democratic Primary, in the New York State Assembly 149 District; and
- c) Granting such other, further, and different relief as the Court may deem just and proper.

Dated: July 25, 2012

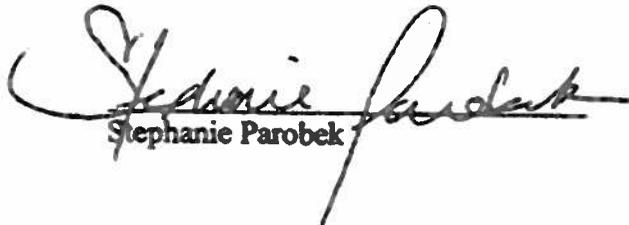


Sean E. Cooney, Esq
Cantor, Dolce & Panepinto, PC
Attorneys for the Petitioners
1600 Main Place Tower
350 Main Street
Buffalo, NY 14202
(716)852-1888

Verification

**STATE OF NEW YORK}
CITY OF BUFFALO}
COUNTY OF ERIE} ss.:**

Stephanie Parobek, being duly sworn deposes and says that she is the Petitioner in this action; that she has read the foregoing Verified Petition and knows the contents thereof; that the same is true to the knowledge of Deponent, except as to those matter therein states to be alleged on information and belief, and that as to those matters she believes to be true

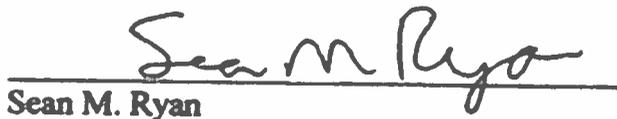

Stephanie Parobek

Sworn to before me this
25th day of July, 2012


Notary Public

Joshua Logan Pennel
Notary Public, State of New York
Reg. # 02 PE6263418
Qualified in Erie County
Expiration: 6/7/16

Sean M. Ryan, being duly sworn deposes and says that he is the Petitioner in this action; that he has read the foregoing Verified Petition and knows the contents thereof; that the same is true to the knowledge of Deponent, except as to those matter therein states to be alleged on information and belief, and that as to those matters he believes to be true


Sean M. Ryan

Sworn to before me this
25th day of July, 2011


Notary Public

Joshua Logan Pennel
Notary Public, State of New York
Reg. # 02 PE6263418
Qualified in Erie County
Expiration: 6/7/16



MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 27, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name: *Chesson, Deborah and Brown, Joseph D. v. Dennis E. Ward and Ralph M. Mohr, Commissioners of and Constituting the Erie County Board of Elections, and Willie Morris and Markeith Pridgen, and Star N. Morris and Derrick Wheeler*

Document Received: Order to Show Cause

Name of Claimants: Deborah Chesson
144 Wecker Street
Buffalo, New York 14215

Joseph D. Brown
133 Goulding Avenue
Buffalo, New York 14208

Claimant's attorney: Jeffrey E. Marion, Esq.
The Williamsville Law Center Building
17 Beresford Court
Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 

Michelle M. Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209
Email: parkerm3@erie.gov

MMP:dld

Enclosure

cc: Michael A. Siragusa, Erie County Attorney

This paper received at the
Erie County Board of Election's Office

From Jason Hurley
On the 26 day of July 2012
At 3:16 P.M.

[Signature]
Signature of BOE Clerk

PRESENT: HON. PATRICK H. NEMOYER, J.
Justice Presiding

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

In the Matter of the Application of

DEBORAH CHESSON

Petitioner-Objector (Lovejoy 3)

JOSEPH D. BROWN

Petitioner-Agrieved Candidate
(Lovejoy 5),

-vs-

DENNIS E. WARD and RALPH M. MOHR
Commissioners of and Constituting the
ERIE COUNTY BOARD OF ELECTIONS

Respondent

and,

**WILLIE MORRIS and
MARKEITH PRIDGEN,**

Respondent-Candidates (Lovejoy 3)

and

**STAR N. MORRIS and
DERRICK WHEELER**

Respondent Candidates (Lovejoy 5);

At a Special Term of the Supreme
Court held in and for the County of
Erie, at the Courthouse in the City of
Buffalo, New York on the 26th day
of July, 2012.

FILED
ACTIONS & PROCEEDINGS

JUL 26 2012

**ERIE COUNTY
CLERK'S OFFICE**

ORDER TO SHOW CAUSE

INDEX NO. 2012/ 2569

IASJ HON PATRICK H. NEMOYER, J.S.C.

PAID
CHECK CASH

JUL 26 2012

**ERIE COUNTY
CLERK'S OFFICE**

ERIE COUNTY CLERK'S OFFICE

Upon the Verified Petition of the Petitioners, Deborah Chesson and Joseph D. Brown, dated the 25th day of July, 2012, and upon the general and specific objections for Lovejoy Election District Three (3), incorporated therein, and after

DUE DELIBERATION having been had, it is hereby,

ORDERED, that the all the **RESPONDENTS** or counsel therefore,

SHOW CAUSE BEFORE THIS COURT, at a Special Term, Supreme Court, to be held in and for the County of Erie, State of New York, in the Courthouse in the City of Buffalo, at Part 34 thereof, on the 6th day of ^{August} ~~July~~, 2012 at 11:45 o'clock in the Forenoon of that day, or as soon thereafter as counsel can be heard,

Why an order pursuant to Election Law, Section 16-102 should not be made and entered in this action, granting the following relief:

1. **Invalidating the Democratic Party designating petitions of the Respondent-Candidates Willie Morris, Markeith Pridgeon, Star N. Morris and Derrick Wheeler, as candidates in the September 13, 2012 primary election for the party positions of district committee member, in the 3rd election district and 5th election district in the Lovejoy Ward, in the City of Buffalo, County of Erie and State of New York; and,**
2. **Directing the Respondent Erie County Board of Elections to remove the names of such Respondents Willie Morris, Markeith Pridgeon, Star N. Morris and Derrick Wheeler, as designated candidates of the Democratic Party for such party positions for said September 13, 2012 primary election; and,**
3. **Granting such other, further and different relief as this Court may deem just and proper.**

SERVICE OF PROCESS:

And it is further,

ORDERED, that service of a conformed copy of this Order to Show Cause and Verified Petition (but not a copy of the objections), upon the Respondents herein, shall be deemed good and sufficient if accomplished as follows:

1. Service upon the Respondent Erie County Board of Elections:

By the delivery of a copy thereof to a person authorized to accept service at the offices of the Erie County Board of Elections located at 134 W. Eagle Street Buffalo, NY 14202.

2. Service upon the Respondent Candidates Willie Morris, Markeith Pridgeon, Star N. Morris, and Derrick Wheeler:

By any of the methods for service upon a natural person, as provided for in CPLR 308.

That such service upon the Respondents Erie County Board of Elections and the named candidates shall be done and any mailing completed no later than 11:59 P.M. on the 26th day of July, 2012; and it is further,

ORDERED, that the Respondent Erie County Board of Elections shall provide to the Court on or before the return date hereof, the original designating petitions of the Respondents candidates for the 3rd and 5th election districts of the Lovejoy Ward, in the

City of Buffalo, County of Erie and State of New York, the Board's entire record, including the objections filed, in Lovejoy 3rd and 5th Election Districts, as well as the Democratic Party designating petitions of Timothy Kennedy for 63rd State Senate District and Crystal Peoples for the 141st State Assembly District, together with a copy of the decision of such Board on the objections filed against the subject designating petition, in election district 3; and it is further,

ORDERED, that the Respondents (or their counsel) shall submit responding papers to the Court and to Petitioner's counsel, no later than 5:00 P.M. on the 31st day of July, 2012.

PATRICK H. MEMOTER, J.S.C.

July 26, 2012

**JUSTICE OF THE SUPREME COURT
COUNTY OF ERIE**

GRANTED:

~~KEVIN J. O'CONNOR~~
Court Clerk

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

In the Matter of the Application of

DEBORAH CHESSON

**Petitioner-Objector (Lovejoy 3)
JOSEPH D. BROWN**

**Petitioner-Aggravated Candidate
(Lovejoy 5),**

-vs-

INDEX NO. 2012/_____

**DENNIS E. WARD and RALPH M. MOHR
Commissioners of and Constituting the
ERIE COUNTY BOARD OF ELECTIONS**

VERIFIED PETITION

Respondent

and,

**WILLIE MORRIS and
MARKEITH PRIDGEN**

Respondent-Candidates (Lovejoy 3)

and

**STAR N. MORRIS and
DERRICK WHEELER**

Respondent Candidates (Lovejoy 5);

**FILED
ACTIONS & PROCEEDINGS**

JUN 26 2012

**ERIE COUNTY
CLERK'S OFFICE**

TO THE SUPREME COURT, ERIE COUNTY:

Petitioners Deborah Chesson and Joseph D. Brown, as and for their Verified Petition, by their attorney Jeffrey E. Marion, Esq., do allege:

1. They are the Petitioners in this proceeding under Election Law, Section 16-102 which seeks to invalidate the Democratic Party designating petitions of the Respondents, Willie Morris, Markeith Pridgen, Star N. Morris and Derrick Wheeler for district committee members in the 3rd and 5th election districts of the Lovejoy Ward in the City of Buffalo, County of Erie and State of New York, for the September 13, 2012 Democratic Party primary election.

I. PARTIES:

1. Petitioners:

2. Petitioner Deborah Chesson is a registered voter in the County of Erie and an enrolled member of the Democratic Party, and who resides at 144 Wecker St., Buffalo, NY 14215.

In addition, she is a qualified person under Election Law, Section 6-154, who has duly filed objections with the Erie County Board of Elections against the Democratic Party designating petition of the Respondent candidates, Willie Morris and

Markeith Pridgen for the party positions of district committee members in the 3rd election district of the Lovejoy Ward, in the City of Buffalo.

3. Joseph D. Brown is also an enrolled Democratic voter residing at 133 Goulding Ave., Buffalo, NY 14208 which is located in the 141st Assembly District in the City of Buffalo, and who is also a candidate for Democratic Party committee member in the same 3rd election district of the Lovejoy Ward, and thus, he is an “aggrieved candidate” as provided for in Election Law, Section 16-102.

2. Respondents:

4. Dennis E. Ward and Ralph M. Mohr are the Commissioners of and constitute the Erie County Board of Elections (hereinafter, “County Board”), which is the governmental administrative body with which the subject designating petitions were filed by the Respondent candidates and whose offices are located at 134 W. Eagle Street, Buffalo, New York 14202.

5. In addition, the general and specific objections by the Petitioner Deborah Chesson against such designating petitions of Respondents Willie Morris and Markeith Pridgen were also filed with such Board and it is the body that will ultimately rule upon the validity of the objections filed by such Petitioner, at the administrative level.

6. Respondents, Willie Morris and Markeith Pridgen, are candidates for the Democratic Party positions of committee member in the Lovejoy 3 election district, at the September 13, 2012 Primary Election, and who were purportedly designated for such party position by the subject designating petition with such document having been filed in the offices of the Respondent County Board.

7. Respondents, Star N. Morris and Derrick Wheeler, are candidates for the Democratic Party positions of committee member in the Lovejoy 5 election district, at the September 13, 2012 Primary Election, and who were purportedly designated for such party position by the subject designating petition with such document having been filed in the offices of the Respondent County Board.

II. PETITIONERS' STANDING:

8. Petitioner Deborah Chesson has previously timely filed with the County Board, general objections (on or about the 16th day of July, 2012) and specific objections (on or about the 20th day of July, 2012) as required by Election Law, Section 6-154.

9. By virtue of her status then as a voter qualified to vote for the party position of district committee member in Lovejoy 3, and being an enrolled member of the

Democratic Party, the Petitioner has standing to commence this invalidation proceeding under the provisions of Election Law, Section 16-102.

10. Petitioner Joseph D. Brown, as a candidate for the party position of Democratic Party committee member in Lovejoy 3rd election district, is an aggrieved candidate with standing to commence this invalidated proceeding under Election Law, Section 16-102.

III. JURISDICTION

11. The appropriate procedure for the invalidation of election-related documents such as the subject designating petitions of the Respondent candidates, Willie Morris, Markeith Pridgen, Star N. Morris and Derrick Wheeler, is an invalidation proceeding under Election Law, Section 16-102.

12. Jurisdiction has been acquired by the timely commencement of this proceeding by the Petitioners within fourteen (14) days of the last date for the filing of designating petitioners with the Board – which for this year was Thursday, July 12, 2012 – as required by Election Law, Section 16-102.

IV. NECESSARY PARTIES

13. All individuals or entities who have an interest in the outcome of the requested invalidation or who might be inequitably affected thereby have been made parties to this proceeding.

V. VENUE:

14. This matter is properly brought in Erie County, as all of the parties are residents thereof and the challenged document was all filed in the Erie County Board of Elections, as provided for by CPLR Section 506.

VI. BACKGROUND

15. This is a proceeding brought by the Petitioners Deborah Chesson and Joseph D. Brown, pursuant to Election Law, Section 16-102, which seeks to invalidate the Democratic Party designating petitions of the Respondent candidates, Willie Morris, Markeith Pridgen, Star N. Morris and Derrick Wheeler – which were filed with the Respondent Erie County Board of Elections.

16. As contained in the specific objections filed with the Board in Lovejoy 3, based upon the numerous grounds contained therein including the alleged backdating, it is the reasonable belief of the Petitioner-Objector that the designating petition of the Respondent candidates Willie Morris and Markeith Pridgen lacks the requisite number of valid signatures (27) and is therefore invalid.

17. However, a review of the signatures of witness Willie Morris on the designating petition of Timothy Kennedy, candidate for State Senate, circulated simultaneously with the subject petition here for committee members, clearly shows that the same signatures were actually witnessed on June 23, 2012 – not, as incorrectly stated as June 6, 2012, on the committee member petition.

18. No objections were filed with the Board against the designating petition of Respondents Star N. Morris and Derrick Wheeler in Lovejoy District 5, but similarly, the witness Willie Morris did backdate the signatures of the voters, which can be easily seen by comparing them to the same signatures he witnessed on the designating petition for Crystal Peoples for member of the State Assembly in the 141st district.

19. Since the entire sheet (numbered page 1) of the committee petition is thus invalid, at best there are only 13 signatures left (on page 2) which could be valid – which are not enough to qualify the petition – 19 signatures are required.

VII. PERMEATION OF FRAUD:

20. Regardless of the total number of signatures, it is clear that candidate and witness Willie Morris engaged in egregious fraudulent conduct in the backdating of signatures on the two subject petitions – for Lovejoy 3 and 5.

21. He knowingly and intentionally backdated them in order to gain the advantage that the Election Law gives to the earlier dated signature in the case of duplicates of the same voters.

22. Without knowing or caring whether the opposition candidates had obtained such signatures, candidate and witness Willie Morris simply backdated them to the first week for circulating petitions – even though they were carried in the third week.

23. Then, to compound the fraud, he signed a witness statement – the equivalent of an affidavit – falsely stating that those were the proper dates.

24. For that reason alone, this court should declare that such petitions are invalid as being permeated with fraud.

VIII. CONCLUSION:

25. Thus, the Democratic Party designating petitions of the Respondent candidates, Willie Morris, Markeith Pridgen, Star N. Morris and Derrick Wheeler, are void and must be invalidated.

26. The Respondent Erie County Board of Elections should be directed to remove the name of the Respondent candidates, Willie Morris, Markeith Pridgen, Star N. Morris and Derrick Wheeler, for committee member in Lovejoy 3 and 5 from the ballot for the September 13, 2102 primary election.

IX. DECISION OF BOARD OF ELECTIONS:

27. As of the date of the commencement of this proceeding, the Petitioner has not yet received notice of the decision on the objections filed with the Respondent Erie County Board of Elections, as to Lovejoy 3.

28. This anticipatory invalidation proceeding is required to be brought before such decision is made by the Board in order to comply with the strict time requirements of Election Law, Section 16-102.

X. SERVICE OF RESPONDING PAPERS

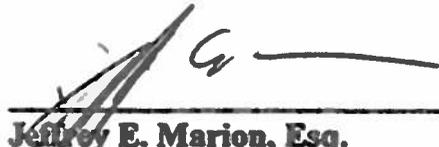
29. Petitioners request that the answering papers be served upon Petitioners' counsel at least one (1) day prior to the return date hereof.

30. No previous request for the relief sought herein has been made to any other Court.

WHEREFORE, Petitioners request that this Court enter an order granting the following relief, pursuant to Election Law, Section 16-102:

1. Invalidating the Democratic Party designating petitions of the Respondent-Candidates Willie Morris, Markeith Pridgen, Star N. Morris and Derrick Wheeler, as candidates in the September 13, 2012 primary election for the party positions of district committee member, in the 3rd election district and 5th election district in the Lovejoy Ward, in the City of Buffalo, County of Erie and State of New York; and,
2. Directing the Respondent Erie County Board of Electionsto remove the name of such Respondents Willie Morris, Markeith Pridgen, Star N. Morris and Derrick Wheeler, as designated candidates of the Democratic Party for such party positions for said September 13, 2012 primary election; and,
3. Granting such other, further and different relief as this Court may deem just and proper.

DATED: July 25, 2012
Buffalo, New York



Jeffrey E. Marion, Esq.
17 Beresford Court
Williamsville, NY 14221
(716) 565-2000

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

Deborah Chesson, being duly sworn deposes and says that (s)he is a Petitioner in this proceeding; that (s)he has read the foregoing **PETITION** and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters (s)he believes them to be true.



Deborah Chesson

Sworn to before me this 25th
day of July, 2012



STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

Joseph D. Brown, being duly sworn deposes and says that (s)he is a Petitioner in this proceeding; that (s)he has read the foregoing **PETITION** and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters (s)he believes them to be true.

Joseph D. Brown

Joseph D. Brown

Sworn to before me this 25th
day of July, 2012

Edward Bennett
Edward Bennett

Name:
Commissioner of Deeds, in and for
the City of Buffalo, County of Erie,
State of New York
My commission expires 12/31/12

DEMOCRATIC DESIGNATING PETITION

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party to be held on September 13, 2012; that my place of residence is truly stated opposite my signature herein, and I do hereby designate the following name or names (or names) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Name(s) of Candidate(s)	Public Office or Party Position	Place of Residence (give post office address, if not identical)
WILLIAM MORRIS	MEMBER of the Erie County Democratic Committee CITY OF BUFFALO	509 Glenwood Ave Buffalo NY 14208
MARKETH PRIDGEN	LOU WARD 3 ELECTION DISTRICT County of Erie, State of New York	122 Kensington Buffalo NY 14211

I do hereby appoint:
 Crystal D. Peoples, 38 Linden Park, Buffalo, New York 14208
 Bryan W. Brown, 14 Elysee Avenue, Buffalo, New York 14208
 Denise G. Peltz, 19 Starbuck Pointe Common, Buffalo, New York 14222
 Dennis A. Smith, 68 Dewey Road, Buffalo, New York 14208
 Donald E. Russell, 25 Shirley Avenue, Buffalo, New York 14215
 Flavio D. Johnson, 40 Penny Place, Buffalo, New York 14208

all of whom are enrolled members of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law. In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

No.	Date	Full Name of Signer (Printed Name)	Residence	City of
1.	6-5-2012	Maurice Britt	59 ERICSON	BUFFALO
2.	6-5-2012	3) Crystal D. Britt	60 ERICSON ave	BUFFALO
3.	6-5-2012	Michelle	172 TEXAS ST	BUFFALO
4.	6-5-2012	Carl Brown	35 ERICSON AVE	BUFFALO
5.	6-5-2012	Kenneth King	32 E. Union Ave	BUFFALO
6.	6-5-2012	Therese Williams	168 S. ...	BUFFALO
7.	6-5-2012	Walter H. WATSON	32 ROEBLING AVE	BUFFALO
8.	6-5-2012	Traci Costner	33 ROEBLING AVE	BUFFALO
9.	6-5-2012	Michelle	166 ROEBLING AVE	BUFFALO
10.	6-5-2012	Amicia M. Lee	308 Texas St.	BUFFALO
11.	6-5-2012	Patricia	191 Texas St	BUFFALO
12.	6-5-2012	Michelle	181 Texas St	BUFFALO
13.	6-5-2012	William B. Williams	175 Texas St	BUFFALO
14.	6-5-2012	Michelle	171 Texas St	BUFFALO
15.	6-5-2012	Michelle	139 Texas St	BUFFALO
16.	6-5-2012	Michelle	135 ...	BUFFALO
17.	6-5-2012	Patricia W. Mc. Bader	165 Newburgh St	BUFFALO
18.	6-5-2012	Frankie M. Bell	177 Newburgh	BUFFALO
19.	6-5-2012	James Bobo	172 Newburgh	BUFFALO
20.	6-5-2012	Michelle	181 Newburgh Ave	BUFFALO
21.	6-5-2012	Michelle	185 Newburgh Ave	BUFFALO
22.	6-5-2012	Charles Young	181 Newburgh	BUFFALO
23.	6-5-2012	Michelle	181 Newburgh Ave	BUFFALO
24.	6-5-2012	Michelle	193 Newburgh	BUFFALO
25.	6-5-2012	Michelle	212 Newburgh	BUFFALO

STATEMENT OF WITNESS

I, William Morris (name of witness) state I am a duly enrolled voter of the State of New York and an enrolled voter of the Democratic Party. I now reside at 509 Glenwood Ave (residence address)

Each of the individuals whose names are subscribed to this petition sheet containing 25 signatures, subscribed the same to my presence on the date above indicated and identified himself or herself to be the individual with a given name. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material misstatement, shall subject me to the same penalties if I had been duly sworn.

Date June 5 2012 Signature of Witness William Morris

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the Board of Elections in order for this petition sheet to be valid.

Town or City of BUFFALO County ERIE

*** DEMOCRATIC PARTY DESIGNATING PETITION ***

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party to be held on September 13, 2012, that my place of residence is truth stated opposite my signature hereon, and I do hereby designate the following named person or persons as a candidate or candidates for the nomination of such party for public office or for election to a party position of such party

Name(s) of Candidate(s)	Party Office or Party Position	Place of Residence (Also Print Office Address if Applicable)
Crystal D. Peoples	Member of Assembly 141 st Assembly District State of New York	58 Linden Pk. Buffalo, NY 14208
Crystal D. Peoples	Female Member New York State Democratic Committee 141 st Assembly District State of New York	58 Linden Pk. Buffalo, NY 14208
Byron W. Brown	Male Member New York State Democratic Committee 141 st Assembly District State of New York	14 Blaine Ave. Buffalo, NY 14208
BYRON W. BROWN CRYSTAL D. PEOPLES ARTHUR G. EVE, JR. BETTY JEAN GRANT MICHAEL J. LICHTEN GERALDINE F. FORD GARIBDI J. PRINCEPPI KAREN ELLINGTON	DELEGATES to the 8th Judicial District Convention for State Supreme Court 141 st Assembly District State of New York	14 BLAINE AVE., BUFFALO, NY 14208 58 LINDEN PK., BUFFALO, NY 14208 194 JEWETT PK., BUFFALO, NY 14214 300 PARKSIDE AVE., BUFFALO, NY 14215 98 WELLINGTON RD., BUFFALO, NY 14219 282 WASHINGTON AVE. UNIT 4, BUFFALO, NY 14215 437 N. ORISON ST., BUFFALO, NY 14204 290 WOLFE AVE., BUFFALO, NY 14211
DEMONTE A. SMITH BRANDI C. GRAY ROSEY L. PRYNE MICHAEL A. DORSEY PAMELA G. CAMELL ROBERT E. BROWN GREGORY B. OLIVA DEBRA L. ROBERTS	ALTERNATE DELEGATES to the 8th Judicial District Convention for State Supreme Court 141 st Assembly District State of New York	48 BEVERLY RD. BUFFALO, NY 14208 666 PARKSIDE AVE., BUFFALO, NY 14215 508 FILLMORE AVE., BUFFALO, NY 14211 253 MERRIMAN ST., BUFFALO, NY 14211 126 WILLIAM BRICE PK., BUFFALO, NY 14214 190 BENNETT VILLAGE TER., BUFFALO, NY 14214 915 FILLMORE AVE., BUFFALO, NY 14212 210 JEFFERSON AVE. UNIT 307, BUFFALO, NY 14204

I do hereby appoint:
 Leonard R. Lendon Jr., 233 Concord Dr., Tonawanda, NY 14150
 Betty Jean Grant, 200 Parkside Ave., Buffalo, NY 14215
 Arthur G. Eve Jr., 184 Jewett Pk., Buffalo, NY 14214
 Gerald A. Rivers, 250 Brockbridge St., Lower Apt., Buffalo, NY 14213
 Carol L. Sipes, 301 Grand St., Tonawanda, NY 14150
 Margaret M. McLaughlin, 8363 Senneca Dr., Eden, NY 14057
 Dennis E. Ward, 210 Cohen Blvd., Amherst, NY 14226
 Frank C. Van Jr., 30 Red Oak Dr., South Cheektowaga, NY 14227 (Town of Cheektowaga)
 Amanda Ortiz Weismann, 288 Huntington Ave., Buffalo, NY 14214

all of whom are enrolled members of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law
 IN WITNESS WHEREOF, I have hereunto set my hand, the day and year above, against my signature

No.	Date	Name of Signer (Print or Print in Ink)	Residence	City
1.	6/25 2012	Maurice Batt	59 ERISON	Buffalo
2.	6/25 2012	3rd floor D. Smith	60 ERISON	Buffalo
3.	6/25 2012	Kurt Batt	172 TEXAS ST.	Buffalo
4.	6/25 2012	Carl J. Brown	35 ERISON AVE	Buffalo
5.	6/25 2012	Walter H. Waiter	32 ERISON	Buffalo
6.	6/25 2012	Walter H. Waiter	32 ROEBLING AVE	Buffalo
7.	6/25 2012	Traci Costner	35 ROEBLING AVE	Buffalo
8.	6/25 2012	Walter H. Waiter	166 ROEBLING AVE	Buffalo
9.	6/25 2012	Shirley M. Lee	208 TEXAS ST.	Buffalo
10.	6/25 2012	Christina J. Lee	191 TEXAS ST.	Buffalo
11.	6/25 2012	Robert J. Lee	191 TEXAS ST.	Buffalo
12.	6/25 2012	Walter H. Waiter	175 TEXAS ST.	Buffalo

STATEMENT OF WITNESS

I (name of witness) Walter H. Waiter state I am a duly enrolled voter of the State of New York and am an enrolled voter of the Democratic Party
 I now reside at residence address: 509 Colwood Road

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) 12 signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date 6-25-2012 Signature of Witness Walter H. Waiter

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the Board of Elections in order for this petition to be valid.

Town or City Buffalo County Erie

DEMOCRATIC DESIGNATING PETITION

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party on September 13, 2012; that my place of residence is truly stated opposite my signature herein, and I do hereby designate the following name (or names) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Name(s) of Candidate(s)	Public Office or Party Position	Place of Residence (also post office address, if not identical)
Star N. Morris	MEMBER of the Erie County Democratic Committee CITY OF BUFFALO LOV WARD	295 Leroy Ave Buffalo, NY 14214
Derrick Wheeler	5 ELECTION DISTRICT County of Erie, State of New York	11 Olympic Ave Buffalo, NY 14215

Buffalo, New York 14208
 a Buffalo, New York 14208
 an Canton, Buffalo, New York 14202
 Dennis A. Smith, 68 Beverly Road, Buffalo, New York 14208
 Dennis E. Smith, 23 Shirley Avenue, Buffalo, New York 14215
 Florence D. Johnson, 40 Pansy Place, Buffalo, New York 14208

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law. In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

No.	Date	Name of Signer	Residence	City of
1.	6-6-2012	[Signature]	138 2nd St.	BUFFALO
2.	6-6-2012	[Signature]	131 4th St	BUFFALO
3.	6-6-2012	[Signature]	126 6th St	BUFFALO
4.	6-6-2012	[Signature]	121 8th St	BUFFALO
5.	6-6-2012	[Signature]	121 E. 10th St.	BUFFALO
6.	6-6-2012	[Signature]	110 5th St	BUFFALO
7.	6-6-2012	[Signature]	110 8th St	BUFFALO
8.	6-6-2012	[Signature]	108 8th St	BUFFALO
9.	6-6-2012	[Signature]	102 8th St	BUFFALO
10.	6-6-2012	[Signature]	68 7th St	BUFFALO
11.	6-6-2012	[Signature]	67 8th St	BUFFALO
12.	6-6-2012	[Signature]	60 8th St	BUFFALO
13.	6-6-2012	[Signature]	54 8th St	BUFFALO
14.	6-6-2012	[Signature]	55 FISHER	BUFFALO
15.	6-6-2012	[Signature]	67 Fisher	BUFFALO
16.	6-6-2012	[Signature]	67 Fisher Street	BUFFALO
17.	6-6-2012	[Signature]	77 Fisher	BUFFALO
18.	6-6-2012	[Signature]	80 Fisher St.	BUFFALO
19.	6-6-2012	[Signature]	85 FISHER ST.	BUFFALO
20.	6-6-2012	[Signature]	91 Fisher St	BUFFALO
21.	6-6-2012	[Signature]	91 Fisher	BUFFALO
22.	6-6-2012	[Signature]	95 Fisher	BUFFALO
23.	6-6-2012	[Signature]	106 Fisher St	BUFFALO
24.	6-6-2012	[Signature]	106 Fisher St	BUFFALO
25.	6-6-2012	[Signature]	128 Fisher St.	BUFFALO

STATEMENT OF WITNESS

I, William Morris (name of witness) state I am a duly enrolled voter of the State of New York and am an enrolled voter of the Democratic Party. I now reside at 509 Elmwood (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing the name of the candidate, subscribed the name in my presence on the dates above indicated and identified himself or herself to be the individual who signed the sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date 6-6 2012
 Signature of Witness William Morris

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the Board of Elections in order for this petition sheet to be valid.

Town or City of BUFFALO County ERIE

This Petition Must be Signed In Ink

Sheet No. 1
 (Do not write in the above space)

*** DEMOCRATIC PARTY DESIGNATING PETITION ***

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party to be held on September 13, 2012; that my place of residence is truly stated opposite my signature herein, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Name(s) of Candidate(s)	Public Office or Party Position	Place of Residence (Also Post Office address if not common)
Timothy M. Kennedy	New York State Senator 63rd District State of New York	36 Britt Ave. Buffalo, NY 14220

I do hereby appoint:

Leonard R. Lantieri Jr., 239 Glendale Dr., Tonawanda, NY 14250
 Betty Jean Grant, 100 Parkridge Ave., Buffalo, NY 14215
 Arthur G. Cho Jr., 184 Jewett Pk., Buffalo, NY 14224
 David A. Rivera, 250 Brookside Dr., Lower Apt., Buffalo, NY 14213
 Gayle L. Dycus, 301 Broad St., Tonawanda, NY 14250

Margaret M. McLoughlin, 6303 Conynbrock Cr., Eden, NY 14057
 Dennis E. Ward, 210 Capen Blvd., Archery, NY 14225
 Frank C. Man Jr., 50 Red Oak Dr., Cheektowaga, NY 14227
 Annette Ortiz Watson, 288 Huntington Ave., Buffalo, NY 14214

all of whom are enrolled members of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.

ALL WITNESSES WHEREOF, I have hereunto set my hand, the day and year placed opposite my signature.

	DATE	Name of Signer (Surnames Required)	Residence	Town or City
1.	6-23 2012	Harley Hardy	138 Elm St.	Buffalo
2.	6-23 2012	Sammy Taha	131 9th St	Buffalo
3.	6-23 2012	Wahid Jee	126 226 St	Buffalo
4.	6-23 2012	Yolande Murrell	121 E 2nd St	Buffalo
5.	6-23 2012	Sabrina Mason	121 E 2nd St	Buffalo
6.	6-23 2012	Michael J. Lee	110 1st St	Buffalo
7.	6-23 2012	William Pitt	110 1st St	Buffalo
8.	6-23 2012	Leah Brown	108 1st St	Buffalo
9.	6-23 2012	Thomas J. ...	102 1st St	Buffalo
10.	6-23 2012	Patricia Reardon	108 Elm St	Buffalo
11.	6-23 2012	Donna Johnson	62 Elm St	Buffalo
12.	6-23 2012	Janita J. ...	100 Elm St	Buffalo
13.	6-23 2012	Janessa C. ...	54 Elm St	Buffalo
14.	6-23 2012	Adia Ch. ...	55 FISHER	Buffalo
15.	6-23 2012	Jain Puroba	67 Fisher	Buffalo
16.	6-23 2012	Zelma Jefferson	67 Fisher St	Buffalo
17.	6-23 2012	Yvonne ...	71 Fisher	Buffalo
18.	6-23 2012	Debra M. ...	80 Fisher	Buffalo
19.	6-23 2012	Jane ...	85 Fisher	Buffalo
20.	6-23 2012	Janet ...	91 Fisher	Buffalo
21.	6-23 2012	Deanna ...	91 Fisher St	Buffalo
22.	6-23 2012	Angela ...	95 Fisher	Buffalo
23.	6-23 2012	William ...	106 Fisher St	Buffalo
24.	6-23 2012	Michelle ...	106 Fisher St	Buffalo
25.	6-23 2012	J. ...	128 Fisher	Buffalo

STATEMENT OF WITNESS

I (name of witness) William Morris state I am a duly qualified voter of the State of New York and am an enrolled voter of the Democratic Party.
 I now reside at (residence address) 509 Grandwood Ave

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) 25 signatures, subscribed to the same on the dates above indicated and identified himself or herself to be the individual who signed this sheet.
 I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

6-23 2012
Date

William Morris
Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the Board of Elections in order for this petition to be valid.

Town or City Buffalo County Erie



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 27, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Betz, Edward A. v. Key, Edward Earl, Mohr, Ralph M. and Ward, Dennis E.</i>
Document Received:	Order to Show Cause
Name of Claimant:	Edward A. Betz 65 Whitney Place, Unit 5 Buffalo, New York 14201
Claimant's attorney:	John T. Loss, Esq. Connors & Vilardo, LLP 1000 Liberty Building 424 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 

Michelle Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209
Email: parkerm3@erie.gov

MMP:dld
Enclosure

F.C.

Nicholas Romano
26 12:11 July 12

Beth Bochiechio

At a Special Term of the Supreme Court held in and for the County of Erie, at the Courthouse, in the City of Buffalo, New York on the 25th day of July, 2012.

PRESENT: Hon. HON. DEBORAH A. HAENDIGES JSC, J.S.C. Justice Presiding

FILED
ACTIONS & PROCEEDINGS

JUL 25 2012

ERIE COUNTY
CLERK'S OFFICE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of
EDWARD A. BETZ,
65 Whitney Place, Unit 5
Buffalo, New York 14201, Objector,

ORDER TO SHOW CAUSE

Petitioner,

vs.

Index No. 2012- 2557

EDWARD EARL KEY,
Putative Candidate for Democratic
Party for Buffalo City Court Judge
"Place of Residence" Listed on
Democratic Designating Petition:
43 Fernhill Avenue, Buffalo, New York 14215;
"Place of Residence" under Election Law § 1-104(22):
706 4th Street, Niagara Falls, New York 14302
and
RALPH M. MOHR and
DENNIS E. WARD, as Commissioners
of Elections and Constituting the
Erie County Board of Elections
134 West Eagle Street
Buffalo, New York 14202,

PAID
CHECK _____ CASH _____

JUL 25 2012

ERIE COUNTY
CLERK'S OFFICE

Respondents,

For an Order Pursuant to the Election Law Declaring
Insufficient, Defective, Invalid, Null and Void, the
Democratic Party Designating Petition of Respondent
Candidate for Buffalo City Court Judge, County of
Erie, State of New York for the Democratic Party
Primary Election to be Held on September 13, 2012

ERIE CO BOE JUL 26 '12 PM 1:210

and to Enjoin, Restrain and Prohibit the Erie County
Board of Elections from Printing and Placing the Name
of Said Candidate Upon the Official Ballots of Such
Primary Election.

Upon the annexed Verified Petition of Edward A. Betz, petitioner, sworn to on the 25th day of July, 2012, with exhibits, it is hereby

ORDERED, that the respondents herein show cause before this Court, Hon. Shirley Troutman, J.S.C., at a Special Term, Part 11, thereof, to be held at Enc Supreme, 25 Delaware Ave, 15th Flk in the City of Buffalo, County of Erie, State of New York, on the 9th day of August, 2012, at 9:30 a.m./p.m., or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. Declaring insufficient, defective, invalid, null and void the Democratic Party Designating Petition of Respondent, Edward Earl Key, Putative Candidate for Democratic Party for Buffalo City Court Judge, which purports to name the Respondent as a candidate for the Democratic Party for Buffalo City Court Judge, County of Erie, State of New York for the Democratic Party Primary Election to be held on September 13, 2012;

2. Enjoining, restraining and prohibiting the respondents, Ralph M. Mohr and Dennis E. Ward, as Commissioners of Elections and Constituting the Erie County Board of Elections, from printing and placing on the official ballots the name of Respondent, Edward Earl Key, as a Democratic Party Candidate for Buffalo City Court Judge, County of Erie, State of New York for the Democratic Party Primary Election to be held on September 13, 2012, and why the petitioner should not have such other and further relief as to this Court may seem just and proper, and it is further

ORDERED, that the respondents, Ralph M. Mohr and Dennis E. Ward, as Commissioners of Elections and Constituting the Erie County Board of Elections,

be and they are hereby ordered and directed to produce upon the return date and hearing related to this order to show cause the originals of (a) the aforesaid Democratic Designating Petition of Respondent Edward Earl Key, Putative Candidate for Democratic Party for Buffalo City Court Judge, County of Erie, State of New York for the Democratic Party Primary Election to be held on September 13, 2012, (b) the General Objections filed against his Democratic Designating Petition, (c) the Specific Objections filed against his Democratic Designating Petition, and (d) any written decision rendered in regard to such objections, and it is further

ORDERED, that sufficient reason appearing therefore, leave is granted to the petitioner to submit upon the return date related to this order to show cause and the argument thereof such additional proof, exhibits and other evidence as may be necessary, and it is further

ORDERED, that service of a copy of this order to show cause, together with a copy of the verified petition with exhibits upon which it is granted, upon (a) the respondents, Ralph M. Mohr and Dennis E. Ward, Commissioners of Elections and Constituting the Erie County Board of Elections, be made by leaving a copy of said papers with a person of suitable age and discretion (including but not limited to personal service upon the respondent(s)), at the Office of the Erie County Board of Elections at 134 West Eagle Street, Buffalo, New York 14202, in the City of Buffalo, County of Erie, State of New York on or before the 26th day of July, 2012, and (b) the respondent, Edward Earl Key (1) by personally serving him on or before the 26th day of July, 2012; or (2) by depositing a copy of the order to show cause and a copy of the verified petition with exhibits upon which it is granted in a

securely sealed and postpaid envelope or package addressed to said respondent candidate, at the address as it appears on the Democratic Designating Petition of said respondent candidate, at a post office or branch thereof or in a post office box regularly maintained by the United States Postal Service in the County of Erie on the 25th day of July, 2012, and (i) by leaving in a conspicuous place a copy of the said order to show cause and a copy of the verified petition with exhibits upon which it is granted outside the outer or other door of the residence of said respondent candidate, at the address as it appears on the Democratic Designating Petition of said respondent candidate on or before the 26th day of July, 2012 or (ii) by leaving a copy of said papers with a person of suitable age and discretion at that address on or before the 26th day of July, 2012; and that such service as herein provided shall be and constitute due, timely and sufficient notice to the respondents herein, and it is further

ORDERED, that service of any answering papers of respondents be filed with the Court and served upon the offices of Connors & Vilardo, LLP, attorneys for Petitioner, at 1000 Liberty Building, 424 Main Street, Buffalo, New York 14202, at or before 5:00 p.m. the day before the return date related to this order to show cause.


Hon. _____, J.S.C.
HON. DEBORAH A. HAENIGES J.S.C.

GRANTED:

GRANTED

JUL 25 2012

BY 
MELANIE RUSZAJ
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of
EDWARD A. BETZ,
65 Whitney Place, Unit 5
Buffalo, New York 14201, Objector,

Petitioner,

-vs-

VERIFIED PETITION

Index No. 2012- 2557

EDWARD EARL KEY,
Putative Candidate for Democratic
Party for Buffalo City Court Judge
"Place of Residence" Listed on
Democratic Designating Petition:
43 Fernhill Avenue, Buffalo, New York 14215;
"Place of Residence" under Election Law § 1-104(22):
706 4th Street, Niagara Falls, New York 14302
and
RALPH M. MOHR and
DENNIS E. WARD, as Commissioners
of Elections and Constituting the
Erie County Board of Elections
134 West Eagle Street
Buffalo, New York 14202,

Respondents,

For an Order Pursuant to the Election Law Declaring
Insufficient, Defective, Invalid, Null and Void, the
Democratic Party Designating Petition of Respondent
Candidate for Buffalo City Court Judge, County of
Erie, State of New York for the Democratic Party
Primary Election to be Held on September 13, 2012

and to Enjoin, Restrain and Prohibit the Erie County
Board of Elections from Printing and Placing the Name
of Said Candidate Upon the Official Ballots of Such
Primary Election.

ERIE CO BOE JUL 26 '12 PM 12:11

FILED
ACTIONS & PROCEEDINGS

JUL 25 2012

ERIE COUNTY
CLERK'S OFFICE

ERIE CO BOE JUL 26 '12 PM 12:11

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The petitioner, by his attorneys, Connors & Vilardo, LLP, 1000 Liberty Building, 424 Main Street, Buffalo, New York 14202 (phone: 716-852-5533), as and for his verified petition herein respectfully shows and alleges:

- 1. That your petitioner, EDWARD A. BETZ, is a registered voter, and enrolled member of the Democratic Party and resides at 65 Whitney Place, Unit 5, Buffalo, County of Erie, State of New York, and is qualified to vote in the Democratic Party Primary Election to be held on September 13, 2012, for the party position (Democratic Party Candidate for Buffalo City Court Judge) for which respondent, Edward Earl Key, is seeking the nomination.**
- 2. That as will be set forth in more detail hereinafter, your petitioner has filed general objections and specific objections pursuant to the New York State Election Law with the Board of Elections of Erie County, State of New York.**
- 3. That at all times hereinafter-mentioned respondents, Ralph M. Mohr and Dennis E. Ward, are the Election Commissioners for the County of Erie and constitute the Erie County Board of Elections ("Erie County Board of Elections"), and maintain their offices at 134 West Eagle Street, Buffalo, New York 14202.**
- 4. That respondent, Edward Earl Key, Putative Candidate, filed a Democratic Designating Petition on or about July 12, 2012, for the Democratic Party position of Buffalo City Court Judge, County of Erie, State of New York for a Democratic Party Primary Election to be held on September 13, 2012. *See Exhibit A* (copy of Petition).**

**THE PETITION LACKS A SUFFICIENT
NUMBER OF VALID SIGNATURES**

5. That your petitioner duly filed on July 16, 2012, with the Erie County Board of Elections, General Objections, *see Exhibit B* (copy of "General Objections"), to the Democratic Designating Petition of Respondent, Edward Earl Key, which were mailed on July 16, 2012 to Respondent, Edward Earl Key; thereafter, your petitioner duly filed on July 23, 2012, with the Erie County Board of Elections, Specific Objections, *see Exhibit C* (copy of "Specific Objections") – filed pursuant to the rules and regulations of the Erie County Board of Elections and the provisions of New York State Elections Law § 6-154 – challenging the validity of the Democratic Designating Petition filed on behalf of said respondent Candidate, for the Democratic Party position of Buffalo City Court Judge.

6. That upon information and belief, the respondent, Erie County Board of Elections, has not made a determination on the objections challenging the aforesaid Democratic Designating Petition.

7. That a copy of said specific objections as filed with the Erie County Board of Elections, *see Exhibit C*, is made a part hereof as though fully set forth herein, and sets forth objections which should have been sustained by the Erie County Board of Elections.

8. The total number of signatures claimed in the Democratic Designated Petition at issue is 3,232. *See Exhibit A*. As set forth in *Exhibit C* (including by reference to the within Appendix "A" ("Numerical and alphabetical references")),

the total number of signatures objected to is 2,057, leaving only 1,125 remaining valid signatures – well short of the 2,000 signatures required to be filed.

9. Indeed, as can be seen from the specific objections (by reference to Appendix “A”), the signatures are invalid because, among other reasons, people have provided wrong addresses, do not live in the City of Buffalo, have signed more than once, are deceased and have hand-printed (rather than signed) as well as subscribing witnesses who, among other things, are not enrolled in the Democratic Party (i.e., the political party making the designation) and who fail to set forth the correct number of signatures subscribed to.

10. Accordingly, the Democratic Designating Petition of respondent Candidate should, as a matter of law, be declared insufficient, defective, invalid, null and void as an instrument to place respondent Candidate upon the ballot for the Democratic Party Primary Election on September 13, 2012 for the Democratic Party position set forth above.

11. That this Supreme Court proceeding is commenced before the Erie County Board of Elections has rendered its decision herein upon the said objections filed by Objector/Petitioner, but within the time provided in Section 16-102 of the New York State Election Law so that that time does not expire prior to the commencement of the Supreme Court proceeding.

**IN THE ALTERNATIVE, THE ENTIRE DEMOCRATIC
DESIGNATED PETITION SHOULD BE STRICKEN
BECAUSE MR. KEY'S ACTUAL "PLACE OF RESIDENCE"
DIFFERS FROM THAT LISTED ON EACH SHEET OF
THE PETITION**

12. In the event that the Erie County Board of Elections (or the Court in the Supreme Court proceeding) does not determine that the remaining valid signatures are insufficient so that the petition is invalid, the Democratic Designating Petition at issue nonetheless should be invalidated.

13. As can be seen from each sheet of the petition, the "Place of Residence" of Mr. Key is listed as "43 Fernhill, Buffalo, NY 14215." *See Exhibit A.*

14. Upon information and belief, however, that "place of residence" is not Mr. Key's actual "place of residence" as defined by Election Law § 1-104 (22), which provides that "[t]he term 'residence' shall be deemed to mean that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return."

15. Upon information and belief, Mr. Key's actual "residence" is 704 4th Street, Niagara Falls, New York 14302.

16. Upon information and belief, that Niagara Falls address has been Mr. Key's residence for quite some time as reflected in the document attached as *Exhibit D.*

17. Upon information and belief, Mr. Key voted from that Niagara Falls address on November 3, 2011 as a member of the Independence Party.

18. In early December of 2011, Mr. Key registered to vote in Erie County, and listed the Niagara Falls address as his former address, with a current address of "43 Fernhill upper" in Buffalo. *See Exhibit E.*

19. According to documents as set forth in *Exhibit F*, 43 Fernhill Avenue in Buffalo is owned by Samuel P. Davis who, upon information and belief, lives at that property. *See Exhibit A* (sheet 148).

20. As can be seen from the sheets of the Democratic Designating Petition, *see Exhibit A*, Mr. Key's sheets are dated from June 6, 2012 to July 10, 2012.

21. Upon information and belief, as reflected in *Exhibit G*, on June 15, 2012, Mr. Key registered a 2009 red Acura (license plate of FMW 9988) and used the Niagara Falls address for the registrant information.

22. In addition, as reflected in *Exhibit H*, even as of July 23, 2012, Mr. Key's address for his driver's license remains the Niagara Falls address, which is also the same address reflected on his vehicle registrations (*see Exhibit I*).

23. Courts have recognized that "residence for the purposes of registration and voting imports not only an intention to reside at a fixed place, but also personal presence in that place coupled with conduct which bespeaks of such an intent." *Matter of Palla v. Suffolk County Board of Elections*, 31 N.Y.2d 36, 47, 334 N.Y.S.2d 860, 867 (1972). "The crucial factor in determining 'whether a particular residence complies with the requirements of the Election Law is that the individual must manifest an intent, coupled with physical presence "without any aura of

sham.”” See *Stewart v. Chautauqua County Board of Elections*, 69 A.D.3d 1298, 1300, 894 N.Y.S.2d 249, 252 (4th Dep’t) (quoting *People v. O’Hara*, 96 N.Y.2d 378, 385, 729 N.Y.S.2d 396, 400 (2001)), *aff’d*, 14 N.Y.3d 139, 146-47, 897 N.Y.S.2d 704, 708-09 (2010) (voter “may not ‘create an address merely to circumvent[] residency requirements””) (quoting *Matter of Palla, supra*).

24. Based upon the foregoing, upon information and belief, the address contained in the Democratic Designated Petition is not Mr. Key’s true residence, but was inserted on each sheet of the petition to mislead the signers of the Democratic Designated Petition and hence, constituted a fraud upon electors.

25. Based upon the foregoing, this Court should conclude that Mr. Key’s true (and only) residence is 706 4th Street, Niagara Falls, New York 14302. At a minimum, petitioner has set forth a sufficient showing that there should be a hearing with testimony from Mr. Key and others concerning his true residence with Mr. Key’s being required to produce copies of (a) any lease for 43 Fernhill Avenue upper, Buffalo New York and 706 4th Street, Niagara Falls, New York, (b) any bills and proof of payment for gas, electricity, cable, telephone, cell phone, internet service, and newspapers and other periodical subscriptions at 43 Fernhill Avenue upper, Buffalo New York and 706 4th Street, Niagara Falls, New York since December 1, 2011, (c) his current information on file with the Attorney Registration Unit of the Office of Court Administration; (d) his EZ Pass statements since December 1, 2011, (e) his bank account statements since December 1, 2011, (f) his credit card statements since December 1, 2011, (g) his driver’s license,

(h) his vehicle registrations, (i) 2011 federal and state income tax returns filed in 2012 (and documents related to any extension sought), (j) quarterly tax payment documents and payments for the last quarter of 2011 and for 2012, (k) W2 forms for 2011, and (l) documents for income earned in 2012 insofar as those documents contain any address of his.

26. In light of the foregoing, this Court should invalidate the entire Democratic Designating Petition of Mr. Key. *See Matter of Chaimowitz v. Calcaterra*, 76 A.D.3d 685, 909 N.Y.S.2d 76 (2d Dep't 2010); *Matter of Willis v. Suffolk County Board of Elections*, 54 A.D.3d 436, 862 N.Y.S.2d 608 (2d Dep't), *leave denied*, 11 N.Y.3d 701, 864 N.Y.S.2d 388 (2008); *Matter of Fernandez v. Monegro*, 10 A.D.3d 429, 780 N.Y.S.2d 741 (2d Dep't 2004); *Matter of Camardi v. Sinawski*, 297 A.D.2d 357, 746 N.Y.S.2d 489 (2d Dep't 2002); *Matter of Ramos v. Gomez*, 196 A.D.2d 620, 601 N.Y.S.2d 343 (2d Dep't 1993); *Matter of Eisenberg v. Strasser*, 307 A.D.2d 1053, 763 N.Y.S.2d 782 (2d Dep't 2003), *aff'g*, (1 Misc. 3d 299, 768 N.Y.S.2d 773 (Sup. Ct. Kings County 2003); *Matter of Buchanan v. Espada*, 88 N.Y.2d 973, 648 N.Y.S.2d 426 (1996); *Matter of Fischer v. Peragine*, 10 A.D.3d 620, 781 N.Y.S.2d 768 (2d Dep't 2004); *Matter of Villafane v. Caban*, 104 A.D.2d 579, 479 N.Y.S.2d 282 (2d Dep't 1984); *see also Stewart, supra*; *Matter of Lemishow v. Black*, 63 N.Y.2d 684, 479 N.Y.S.2d 972 (1984) (subscribing witness), *aff'g*, 104 A.D.2d 460, 478 N.Y.S.2d 971 (2d Dep't 1984).

27. For the foregoing reasons, respondents, Ralph M. Mohr and Dennis E. Ward, as Commissioners of Elections and Constituting the Erie County Board of

Elections, should be enjoined, restrained and prohibited from printing and placing on the official ballots the name of Respondent, Edward Earl Key, as a Democratic Party Candidate for Buffalo City Court Judge, County of Erie, State of New York for the Democratic Party Primary Election to be held on September 13, 2012.

28. That because of the time constraints which are considerably shorter than those normally allowed by the Civil Practice Laws and Rules of the State of New York, your petitioner prays for a special provision for service as set forth in the order to show cause.

29. That the petitioner requests leave and reserves the right to submit upon the argument and hearing of the application additional and supplementary proof by way of affidavit, documentary proof and oral testimony to substantiate the allegations contained in the petition.

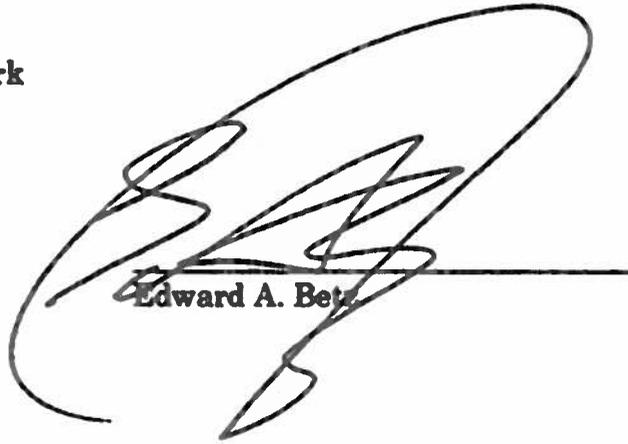
30. That your petitioner has no adequate remedy or relief at law or in equity other than the relief requested herein.

31. That the petitioner has made no previous application for the relief sought herein, or for the order to show cause hereunto annexed, or for any other similar relief.

WHEREFORE, your petitioner respectfully prays for the granting of the annexed order to show cause and for a final order granting the relief requested herein and in the order to show cause, invalidating the Democratic Designating Petition of respondent Candidate for the Democratic Party position of Buffalo City

Court Judge, County of Erie, State of New York for the Democratic Party Primary Election to be held on September 13, 2012, and for such other and further relief that the Court may deem just and proper.

**DATED: Buffalo, New York
July 25, 2012**

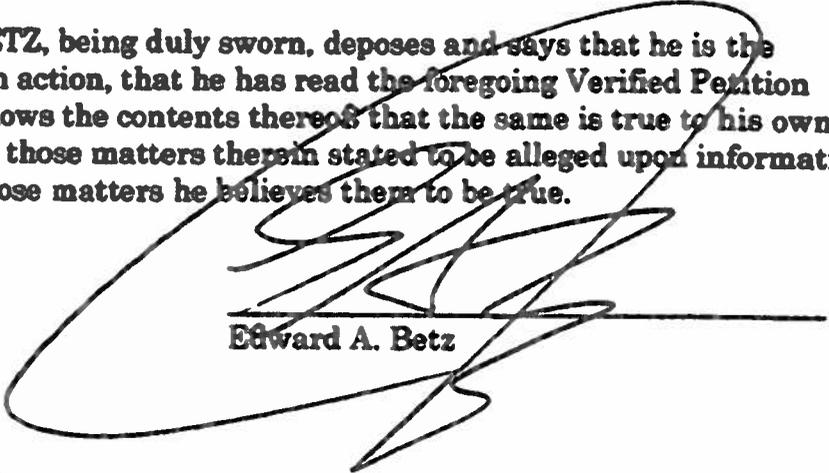


Edward A. Betts

VERIFICATION

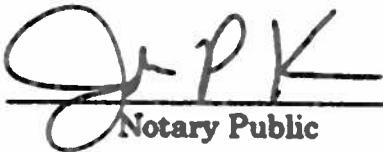
STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

EDWARD A. BETZ, being duly sworn, deposes and says that he is the Petitioner in the within action, that he has read the foregoing Verified Petition annexed herein and knows the contents thereof that the same is true to his own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.



Edward A. Betz

Sworn to before me this
25th day of July, 2012



Notary Public

JOHN KROMER
Notary Public - State of New York
No. 01KR8113132
Qualified in Erie County
My Commission Expires July 18, 2016

