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

August 8, 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:	*Curry, Robert v. NYS Children & Family Services and Erie County Department of Social Services*
Document Received:	Verified Petition
Name of Claimant:	Robert Curry
Claimant's attorney:	Barbara M. Sims, Esq. 181 Franklin Street, Ste. 101 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

MMP:dld

Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the MATTER OF THE Application of
ROBERT CURRY, Petitioner-Appellant,

FILED
AUG 0 3 2012
ERIE COUNTY
CLERK'S OFFICE

For a Judgment under Article 78 of the Civil Practice Law and Rules Annulling a Determination Denying Petitioner's Application to Expunge His Name From the State Central Register of Child Abuse and Maltreatment

-against-

Index No.: 2012/000842
SH# 60349

New York State Children and Family Services, and
Erie County Department of Social Services
Respondent-Respondent

AMENDED NOTICE OF PETITION TO REVIEW DETERMINATION

PLEASE TAKE NOTICE that upon the amended petition of ROBERT CURRY, verified on July 27, 2012, and upon the affidavits of JOHN MONTAGUE and BASILISA MONTAGUE, sworn to on March 7, 2012, and upon the Exhibit marked "X", the undersigned will apply at the Erie County Supreme Courthouse located at 25 Delaware Avenue, Buffalo, New York, Part 20 thereof before the Hon. Timothy J. Walker, J.S.C. on August 24, 2012 at 9:30 in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgment pursuant to CPLR Article 78, to revise and annul the determination of Child and Family Services which denied the Motion of ROBERT CURRY to expunge his name from the NYS Register of Child Abuse and Maltreatment, after a Hearing, and directing that the Petitioner's name be expunged from the Register on the ground that the allegations of the NYS Department of Social Services were not proven by a preponderance of the evidence, and directing that his name be expunged and for such other and further relief as to this court may appear just.

This paper received at the
Erie County Attorney's Office
from Frank Sins on
the 3 day of August, 2012
at 4:00 a.m./p.m.
Kelly Brinkworth
Assistant County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the MATTER OF THE Application of
ROBERT CURRY, Petitioner-Appellant,

For a Judgment under Article 78 of the Civil Practice Law and Rules
Annulling a Determination Denying Petitioner's Application to Expunge His
Name From the State Central Register of Child Abuse and Maltreatment

-against-

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Dated: Buffalo, New York
July 27, 2012

Barbara M. Sims, Esq.
Attorney for Petitioner-Appellant
181 Franklin Street, Suite 101
Buffalo, New York 14202
(716) 840-0001

To: Gladys Carrión, Esq., Commissioner
New York State Office of Children & Family Services
Capital View Office Park
52 Washington Street
Rensselaer, New York 12144-2834
(Via Certified Mail, Return Receipt Requested)

Legal Division
New York State Office of Children & Family Services
Capital View Office Park
52 Washington Street, Room 141 North
Rensselaer, New York 12144-2834
(Via Certified Mail, Return Receipt Requested)

New York State Attorney General
350 Main St # 300A
Buffalo, New York 14202
(Via Hand Delivery)

Erie County Department of Law
95 Franklin Street #1634
Buffalo, New York 14202
(Via Hand Delivery)

Dated: Buffalo, New York
July 27, 2012

Barbara M. Sims, Esq.
Attorney for Petitioner-Appellant
181 Franklin Street, Suite 101
Buffalo, New York 14202
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95 Franklin Street #1634
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the MATTER OF THE Application of
ROBERT CURRY, Petitioner-Appellant,

For a Judgment under Article 78 of the Civil Practice Law and Rules
Annulling a Determination Denying Petitioner's Application to Expunge His
Name From the State Central Register of Child Abuse and Maltreatment

-against-

Index No.: 2012/000842
SH# 60349

New York State Children and Family Services, and
Erie County Department of Social Services
Respondent-Respondent

AMENDED PETITION TO REVIEW DETERMINATION

The Amended Petition of ROBERT CURRY respectfully shows:

1. That your Petitioner-Appellant is 22 years of age.

2. Petitioner-Appellant lives with his maternal grandparents JOHN MONTAGUE and BASILISA MONTAGUE and has lived with them since birth.

3. Petitioner-Appellant has never lived with his father and mother who were never married.

4. Also, living in the household with his grandparents and Petitioner-Appellant was BRANDI MONTAGUE, the first cousin of Petitioner-Appellant's Mother, and the Mother of SHANIA BELLAMY, the child allegedly sexually assaulted.

5. Petitioner-Appellant is requesting that the Decision of the Hearing Office after the Hearing in the Child and Family Services proceeding be reviewed because Petitioner-Appellant does not believe it is based upon a finding of substantial evidence to support the Decision for the following reasons:

6. Petitioner-Appellant testified under oath that he had never been sexually active.

7. During the course of Petitioner-Appellant's attendance at ECC North Campus, where

he was then attending, there was a program established wherein the students were encouraged to be voluntarily examined for sexually transmitted diseases.

8. Petitioner-Appellant participated in the program, wherein he was examined and has the results of the examination which corroborated his testimony that he had never been sexually active nor had he ever been infected with a sexually transmitted disease (See Exhibit "X"). The Respondent-Respondent produced no conflicting evidence.

9. The Respondent-Respondent produced no conflicting evidences it is paradoxical that Brandi Montague would report that she believed that Petitioner had infected her daughter, when Petitioner-Appellant, at the age of 20, had never even had a girlfriend, and BRANDI MONTAGUE, who was the Mother of 3 year old SHANIA BELLAMY, had been sexually active for several years. .

10. The affidavits of JOHN MONTAGUE and BASILISA MONTAGUE state that BRANDI MONTAGUE had a new boyfriend at the time of the alleged events.

11. There were no witnesses produced at the Hearing, except for an investigator who testified that Shania had referred to her private parts as a "coo".

12. The Erie County Department of Social services did not produce one witness who could be cross examined.

13. Petitioner-Appellant was not permitted to face his Accusers.

14. Petitioner-Appellant had never heard the term "coo" previously.

15. It was never explained how Shania had learned the term or who had schooled her in its use.

16. It was not explored as to who taught Shania to use such a term or whether someone had also taught the child to say that Petitioner-Appellant had touched her.

17. There remain many unanswered questions regarding this accusation which were never explored.

WHEREFEORE, it is respectfully requested that the Determination of CHILD AND FAMILY SERVICES be reversed and that the Petitioner-Appellant have such other and further relief as to this court appears just.

Dated:Buffalo, New York
July 27, 2012

Robert Curry, Petitioner-Appellant

VERIFICATION

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

ROBERT CURRY, being duly sworn, states that he is the PETITIONER-APPELLANT in this action and that the foregoing AMENDED PETITION is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

Dated: Buffalo, New York
July 27, 2012

Robert Curry, Petitioner-Appellant

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

On the 27th day of July in the year 2012, before me, the undersigned, personally appeared ROBERT CURRY personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public/Comm. Of Deeds

BARBARA M. SIMS
Notary Public, State of New York
Qualified in Erie County
Commission Expires April 30, 2015

Exhibit "X"

WEST SENECA NY 14220

(800) 295-6598 (800) 937-3

763911 22-95-001
KENMORE FAMILY
MEDICINE LLP
2914 ELMWOOD AVE
KENMORE, NY 14217

716 [illegible]-4770

01301990BC

DAVID A SILVERSTE

Report Locat: MULTI SCRIPTS

TEST PROCEDURE	TEST RESULT	UNITS	REFERENCE
RPR W/TITER and CONF RFX			
RPR SCREEN	NON-REACTIVE		NON-RE
CHLAMYDIA/GC DNA, SDA			
SOURCE	URINE-BLADDER		
C.TRACHOMATIS DNA, SDA	NOT DETECTED		NOT DE

THE PERFORMANCE CHARACTERISTICS OF THIS ASSAY HAVE BEEN DETERMINED BY QUEST DIAGNOSTICS. PERFORMANCE CHARACTERISTICS REFER TO THE ANALYTICAL PERFORMANCE OF THE TEST USING LIQUID BASED CYTOLOGY SAMPLES. THIS TEST WAS PERFORMED USING THE BD PROBETEC(TM) ET CHLAMYDIA TRACHOMATIS AND NEISSERIA GONORRHOEAE AMPLIFIED DNA ASSAYS.

N.GONORRHOEAE DNA, SDA	NOT DETECTED		NOT DE

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CODE	PERFORMING SITE	ADDRESS
P	QUEST DIAGNOSTICS	875 GREENTREE ROAD 4 PARKWAY CENTER PITTSBURGH, PA 15220

CURRY, ROBERT
KENMORE FAMILY

FASTING: NO *CONSOLIDATED FINAL REPORT*
*NOTE: SOME OR ALL RESULTS WERE PREVIOUSLY

MAY 24 2010

[redacted]

[redacted]

(800) 295-6590 (800) 937-[redacted]

716 [redacted]-4970

01301990RC

DAVID A SILVERSTE[redacted]

763911 22-95-001
KENMORE FAMILY
MEDICINE LLP
2914 ELMWOOD AVE
KENMORE,NY 14217

Report Model: MULTI-SCRIPTS

TEST PROCEDURE	TEST RESULT	UNITS	REFERENC
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RPR SCREEN	NON-REACTIVE		NON-RE
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CODE	PERFORMING SITE	ADDRESS
P	QUEST DIAGNOSTICS	[redacted] GREENTREE ROA[redacted] 4 PARKWAY CENTER PITTSBURGH, PA 15220

CURRY,ROBERT
KENMORE FAMILY

FASTING: NO *CONSOLIDATED FINAL REPORT*
*NOTE: SOME OR ALL RESULTS WERE PREVIOUSL[redacted]

MAY 24 2010

Certified Copy of Medical Records

Re: [illegible]

I, **David A. Silverstein, MD**, do hereby certify that I am a physician duly lisenced to practice medicine in the State of New York; that I have in my possession the records of the Quest Diagnostics dated 6/21/10; that the photographic reproduction to which this certification is attached is a true and correct copy of the original records of Quest Diagnostics required to be produced before Hon. _____, on _____, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand this 22 day of June, 2010

David A. Silverstein, MD