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

October 15, 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:	*Devane, Benjamin by Terry, Monica as png v. City of Buffalo, County of Erie, et al.*
Document Received:	Notice of Claim
Name of Claimant:	Monica Terry 732 Niagara Street Buffalo, New York 14213
Claimant's attorney:	James M. O'Keefe, Esq. William Mattar, P.C. 6720 Main Street, Suite 100 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

MMP:dld
Enclosure

IN THE MATTER OF THE CLAIM OF:

MONICA TERRY as parent and natural guardian of BENJAMIN DEVANE, infant
732 Niagara Street
Buffalo, New York 14213

Claimant,

-against-

CITY OF BUFFALO
1100 City Hall
65 Niagara Square
Buffalo, New York 14202, and

CITY OF BUFFALO SCHOOL DISTRICT
720 City Hall
Buffalo, New York 14202, and

CITY OF BUFFALO BOARD OF EDUCATION
720 City Hall
Buffalo, New York 14202, and

CITY OF BUFFALO SCHOOL 49
Division of Real Estate Room 1202
City Hall
Buffalo, New York 14202,

BUFFALO SEWER AUTHORITY
1038 City Hall
Buffalo, New York 14202,

ERIE COUNTY WATER AUTHORITY
295 Main Street, Room 350
Buffalo, NY 14203

ERIE COUNTY
95 Franklin Street
Buffalo, NY 14202

ERIE COUNTY DIVISION OF SEWER MANAGEMENT
95 Franklin Street
Buffalo, NY 14202, and

WESTSIDE COMMUNITY SERVICES
161 Vermont Street
Buffalo, New York 14213

Respondents.

NOTICE OF CLAIM

PLEASE TAKE NOTICE that the undersigned MONICA TERRY as parent and natural guardian of BENJAMINE DEVANE, an infant, hereby presents, in accordance with the General Municipal Law Section 50-e and the New York Public Authorities Law Section 1067, this Notice of Claim and hereby makes claim against the City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water Authority, Erie County Division of Sewer Management, and Westside Community Services, and in support thereof alleges:

1. The Claimant is MONICA TERRY as parent and natural guardian of BENJAMIN DEVANE, infant, and they reside at 732 Niagara Street, Buffalo, New York 14213. They are represented by counsel: WILLIAM MATTAR, P.C.; James M. O'Keefe, Esq., 6720 Main Street, Suite 100, Williamsville, NY 14221-5986 (716) 633-3535.

2. The nature of the Claim is one to recover damages for personal injuries and conscious pain and suffering, change of lifestyle, loss of enjoyment of life, general and special damages, medical expenses and property damage and all other damages allowed by law resulting from the injuries suffered by the Claimant, as a result of the negligence of the City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water Authority, Erie County Division of Sewer Management, and Westside Community Services in their maintenance, management, operation, and control of the sewer drains on or about the basketball court located at 161 Vermont Street, Buffalo, New York, and more specifically, in failing to ensure the premises in general were managed, maintained, and controlled in such a manner as to provide a safe area for individuals to walk.

3. The incident which forms the basis of the claim herein occurred at approximately 12:30p.m. on Wednesday, August 1, 2012 at 161 Vermont Street in the City of Buffalo, County of Erie and State of New York. On that date and at that time, the Claimant was playing basketball and stepped into a damaged storm drain, which was owned, constructed, and maintained by the City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water Authority, Erie County Division of Sewer Management, and Westside Community Services, causing him to fall to the ground and suffer bodily injury. Photogaphs depicting the area where the Claimant fell are attached as **Exhibit A.**

4. That as a result of the foregoing, the Claimant sustained serious and substantial injuries, including lacerations to his left leg requiring sutures and other injuries which necessitated emergency medical attention. These injuries may be of a permanent and indefinite duration, and the Claimant MONICA TERRY as parent and natural guardian of BENJAMIN DEVANE has been and may be forced to expend sums of money for hospitals, doctors, and other medically related expenses. Other injuries will be disclosed as revealed through diagnosis by treating physicians and other medical personnel. A copy of the Claimant's treatment records concerning this incident are attached as **Exhibit B.** Photographs of his injury are attached as **Exhibit C.**

5. That the said injuries were occasioned solely and wholly as a result of the negligence of the the City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water Authority, Erie County Division of Sewer Management, and Westside Community Services, in their ownership, maintenance, safety and management of their property.

6. The City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water

Authority, Erie County Division of Sewer Management, and Westside Community Services by and through their agents, servants and employees had actual or constructive notice of the dangerous condition and hazard.

7. That the said injuries were occasioned partly and wholly as a result of the negligence of the City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water Authority, Erie County Division of Sewer Management, and Westside Community Services, and through their agents, servants and employees and without any negligence on the part of the Claimant contributing thereto.

WHEREFORE, the Claimant requests that this claim be allowed and paid by the City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water Authority, Erie County Division of Sewer Management, and Westside Community Services.

PLEASE TAKE FURTHER NOTICE, that unless said claim is adjusted and paid by the City of Buffalo, City of Buffalo School District, City of Buffalo Board of Education, City of Buffalo School 49, Buffalo Sewer Authority, Erie County, Erie County Water Authority, Erie County Division of Sewer Management, and Westside Community Services within thirty (30) days from the date of service of the Notice of Claim, said Claimant intends to commence an action in the Supreme Court of the State of New York against the Respondents, seeking a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest, costs and disbursements.

DATED: September 27, 2012

James M. O' Keefe, Esq.
WILLIAM MATTAR, P.C.
Attorneys for Claimant
Office and Post Office Address
6720 Main Street, Suite 100
Williamsville, NY 14221-5986
(716) 633-3535

VERIFICATION

Monica Terry, as Parent and Natural Guardian of Benjamin Devane, an infant, being duly sworn, depose and say that she is the Claimant in this action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to her knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters they believe them to be true.

Monica Terry

Sworn to before me this
28th day of September, 2012

Notary Public

TERILYN J. YOUSEY
Notary Public - State of New York
No. 01YO6172606
Qualified in Erie County
My Commission Expires August 13, 2015