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

April 29, 2013

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:	*Bender, Elan S. v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Elan S. Bender 1240 Delaware Avenue Buffalo, New York 14209
Claimant's attorney:	C. Daniel McGillicuddy, Esq. William Mattar, P.C. 6720 Main Street, Suite 100 Williamsville, NY 14221-5986

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

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

This paper received at the Erie County Attorney's Office from [illegible] on the 25 day of April, 2013 at 1:35 a.m./p.m.
Kelly [illegible]
Assistant County Attorney

IN THE MATTER OF THE CLAIMS OF:

ELAN S. BENDER
1240 Delaware Avenue
Buffalo, New York 14209

Claimant

NOTICE OF CLAIM

v.

COUNTY OF ERIE
95 Franklin Street, Room 1534
Buffalo, New York 14202

Respondents

PLEASE TAKE NOTICE that claimant ELAN S. BENDER, by attorneys William Mattar, P.C. hereby makes and presents this claim against the COUNTY OF ERIE and in support thereof alleges and states:

1. That the undersigned Claimant, ELAN S. BENDER, resides at 1240 Delaware Avenue, Buffalo, New York 14209. His attorneys are William Mattar, P.C., 6720 Main Street, Suite 100, Williamsville, NY 14221-5986.

2. That the nature of the claim is to recover damages for serious and severe personal injuries, conscious pain and suffering, change of lifestyle, loss of enjoyment of life, general and special damages, medical expenses, and property damages and all other damages allowed by law resulting from the injuries suffered by the claimant, ELAN S. BENDER, on February 16, 2013,

when the claimant's back was broken in at least two locations, to wit L-1 and L-2 of his lumbar spine requiring surgical correction; after hitting a partially buried pipe and/or hose while sledding at around the Rose Garden in Delaware Park in the City of Buffalo, County of Erie and State of New York.

3. That the Claimant's damages and injuries occurred as a result of the negligent, careless, and reckless disregard of the COUNTY OF ERIE, their servants, agents and/ or employees in negligently maintaining, managing, controlling and inspecting said premises, in failing to assure that the grounds were safe, the County of Erie, it's agents, servants and/or employees had actual and/or constructive prior notice of said pipe and of the premises defect it constituted. Further the COUNTY OF ERIE had actual and constructive notice of said condition.

4. The claim arose on the above referenced date, location, and approximate time, when the claimant's back was broken in at least two locations, to wit L-1 and L-2 of his lumbar spine, requiring surgical correction; after hitting a partially buried pipe and/or hose while sledding at and/or near the Rose Garden in Delaware Park in the City of Buffalo, County of Erie.

5. That as a result of the foregoing, the claimant, ELAN S. BENDER, sustained multiple serious severe and painful injuries including but not limited to at least a fractured spine at L1 and L-2, requiring surgical correction. These injuries will be of a permanent or indefinite duration and claimant, ELAN S. BENDER will in the future be forced to expend sums of money for hospitals, doctors and other medical expenses. Other injuries will be disclosed and revealed as diagnosed by treating physicians and other medical personnel.

6. That the said injuries were occasioned solely and wholly as a result of the negligence of the COUNTY OF ERIE, its agents, servants and/or employees without any negligence on the part of the claimant contributing thereto.

WHEREFORE Claimant requests that these claims be allowed and paid.

PLEASE TAKE FURTHER NOTICE that unless said claims are adjusted and paid 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: April 16, 2013

C. Daniel McGillicuddy, Esq.
WILLIAM MATTAR, P.C.
Attorneys for Plaintiff
Office and Post Office Address
6720 Main Street, Suite 100
Williamsville, NY 14221-5986
(716) 633-3535

Claimant, ELAN S. BENDER being duly sworn, deposes and says:

I have read the foregoing notice of claim and know its contents; the same is true to my knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

ELAN S. BENDER

Subscribed and sworn to before me
This 23 day of April, 2013

Notary Public

KARA K ROZAK
Lic. #01R06265666
Notary Public-State of New York
Qualified in Erie County
My Commission Expires FEBRUARY 06, 2016