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# COUNTY OF ERIE

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May 2, 2018

*Via Hand Delivery*

Hon. Peter Savage, Esq.  
Chair, Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

**Re: Legislative resolution 2-5 (February 1, 2018)  
Report from County Attorney detailing settlements over  
harassment claims paid for with public dollars  
Our File No.: 22-20180011**

Dear Chairman Savage:

Please accept this as the responsive report of the County Attorney. The resolution above requested that the County Attorney's Office submit a report within 90 days to the County Legislature. This report is to provide details on all claims, settlements, or judgments entered into by the County involving accusations of harassment for the period January 1, 2013 – December 31, 2017.

As set forth below, our office has developed a favorable track record for these types of claims. Of the 119 claims filed from 2013 to 2017, we paid \$0 on 103 cases (87%). There were 9 matters where we paid between \$1 to \$5,000; put another way, we paid \$0 to \$5,000 on 94% of the claims (i.e., 112 out of 119 claims.) That is a winning record.

## Definitions

The resolution included a definition of the term "harassment": sexual misconduct, blatant racial bigotry, repeated discrimination against an individual based on race, gender, ethnicity, sexual orientation, disability or any other protected class.

Please be mindful that the term "harassment" is a legal term of art that is associated with claims for sexual harassment (i.e., unwanted sexual advances, requests for sexual favors, and

other verbal or physical harassment of a sexual nature.<sup>1)</sup> The term “harassment” is not generally associated with the other protected class. That is to say, a claim filed with the New York State agency charged with enforcing the New York State Executive Law Article 15 (“Human Rights Law”) will not include the term “harassment” as to issues arising as to race, ethnicity, disability or other protected classes. After an exhaustive review of the cases prompted by this request, a single instance of a sexual misconduct settlement was discovered. It was not a workplace “superior-subordinate” matter but was a complaint by a customer directed to a caseworker.

The term “blatant racial bigotry” is not a term in use by either of the agencies that operate to ensure “an equal opportunity to enjoy a full and productive life.”<sup>2</sup> For instance, a claim associated with race would be drafted to assert discrimination on the basis of race or color – it would not assert “bigotry” nor would the complaint include that the behavior was “blatant.”

The term “repeated” was included in the Resolution as a modifier to action “against an individual based on race, gender, ethnicity, sexual orientation, disability or any other protected class.” In our view, this was ambiguous. Did it confine the report to instances where a particular individual made “repeated” claims? Or did it confine it to instances where there was an allegation of “repeated” behavior by a County employee that was directed to an individual? Either of those interpretations would result in a very short report, which seemed to be at odds with the goal of the resolution that “the public has a right to know how much the county has spent in the past to settle harassment claims against individuals employed by the [C]ounty.”

The term “plaintiff” was included in the Resolution as a modifier regarding “details” as to matters where “any such discrimination settlements or judgments are found to exist.” This word also caused an ambiguity to exist. Did it confine the report to instances where the claim had ripened to a lawsuit? Where a matter is filed as a Notice of Claim, the person is a “claimant”; where filed in the New York State Division of Human Rights, the person is a “complainant”; where filed with the Equal Employment Opportunity Commission, the person is a “charging party.” One is only denominated as a “plaintiff” when a matter is filed in state court or in federal court. Confining the report to instances involving a “plaintiff” would similarly result in a short report; again, this appeared to be at odds with the goal of the resolution.

Please note that we adopted a broad interpretation of the terms in the definition. We were guided by the last clause of the definition and therefore performed a search for all claims as to all protected classes.<sup>3</sup> We did not confine the report to instances alleging “repeated” acts by or as to a particular individual. We did not confine the report to instances by a “plaintiff.”

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<sup>1</sup> [https://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](https://www.eeoc.gov/laws/types/sexual_harassment.cfm)

<sup>2</sup> <https://dhr.ny.gov/mission-statement>

<sup>3</sup> For matters filed under the New York State Executive Law Article 15 (“Human Rights Law”), those protected classes are: age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status, and protection from retaliation for filing complaints of discrimination.

For matters filed with Equal Employment Opportunity Commission, a federal agency, those protected classes are: race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information, and protection from retaliation.

These are not an exhaustive list; a public employee may be entitled to protections arising under the U.S. Constitution, the New York State Constitution, the New York Civil Rights Law, and a collective bargaining agreement.

Report of claims filed January 2013 to December 2017

For the period January 1, 2013 to December 31, 2017, there were 119 such claims filed against the County. Of the 119 claims, 103 have a payment of \$0 and 9 matters resulted in a settlement of \$5,000 or less. These 112 matters represent a success rate of 94%.

Of the remaining 7 matters that the County settled with payment in excess of \$5,001, these total \$394,264:

Settlement between \$5,001 and \$20,000:	4 <sup>4</sup>
Between \$20,001 and \$25,000:	1 <sup>5</sup>
Between \$25,001 and \$50,000:	1 <sup>6</sup>
Between \$50,000 and \$100,000:	0
Between \$100,001 and \$200,000:	0
Between \$200,001 and \$250,000:	1 <sup>7</sup>

The single settlement for \$240,000 accounted for 61% of the total paid for settlement in this period of time. There were zero judgments paid for claims filed during this period of time.

Report of claims filed before December 2011

During the period January 1, 2013 to December 31, 2017, there were 6 claims where a settlement or judgment was paid by the County for a matter filed *before* January 1, 2013. In each case, the matter was filed before December 31, 2011.

Of these 6 matters, the total paid was \$822,137. This is not a snapshot as to claims filed before December 31, 2011; the claims that concluded in advance of January 2013 are not part of this survey. Also: claims concluded during the relevant time for \$0 are not part of this survey.

	<u>Settlement</u>
Filed in 2009:	\$67,500 in 2013
Filed in 2010:	\$47,194 in 2014 \$239,000 in 2017 \$450,000 in 2017
Filed in 2011:	\$8,443 <sup>8</sup> in 2014 \$10,000 in 2014

The single settlement for \$450,000 accounted for 55% of the total paid for settlement or judgments with respect to claims filed before December 31, 2011.

The settlements for claims filed before December 31, 2011 total \$822,137. This accounts for 68% of *all* payments made between January 1, 2013 and December 31, 2017.

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<sup>4</sup> Matters concluded for: \$15,000; \$20,000; \$20,000; and \$17,025.  
<sup>5</sup> One matter concluded for \$25,000.  
<sup>6</sup> One matter concluded for \$35,000.  
<sup>7</sup> One matter concluded for \$240,000.  
<sup>8</sup> A judgment, not a settlement.

Settlements or Judgments

The resolution requested that, as to any settlement or judgments, the report is to include the original notice of claim, plaintiff details, payment amount and disposition of the case. That is included on the spreadsheet attached as Exhibit A. We have stricken the names of claimants who are: 1) a DSS recipient (to maintain the privacy of their receipt of benefits); and 2) an inmate (to maintain the privacy of their access to funds – that is, as to other inmates.) We can disclose this material in executive session at the Legislature's request.

We are including the same information – except for the name of the claimant -- as to the matters concluded for \$0. This is included on the spreadsheet attached as Exhibit B.

We are at your disposal if you have any inquiries about this matter.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

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MMP:dld  
Attmts.

Exhibit A

Repeated discrimination against an individual based on:														
Date claim opened	our file #	Sexual misconduct	Blatant racial bigotry	Race	Gender	Ethnicity	Sexual Orientation	Disability	Any other protected class	Original Notice of Claim	Plaintiff Details	Payment amount	Disposition of the case	
2013														
1	2/13/2013	35-20130001								Complainant alleged workplace discipline was in retaliation for her filing previous complaints.	DHR Complaint	Bell, Donyale	\$4,250	DHR found probable cause; issue of fact re: whether workplace discipline was retaliatory for her filing two prior DHR complaints; reached settlement agreement at Day 1 of the hearing before ALJ Erazo (3/17/2014) that settled this DHR complaint and the federal lawsuit filed in the WDNY (see below.)
2	7/30/2013	31-20130067								Complainant alleged discrimination on grounds of disability, hostile work environment, and retaliation.	DHR Complaint	Boyce, Thomas Executive session:	\$15,000	DHR found "no probable cause"; lawsuit filed in WDNY for discrimination on grounds of disability (attempt to limit Jail Management Division OT to 4 hours), alleged interference with FMLA rights, and \$1983 (due process.) Complainant's employment was terminated; lawsuit amended to add his claim that his termination was discriminatory. The judge granted in part the County's Motion To Dismiss; matter concluded at mediation before discovery on the surviving portion of action.
3	11/25/2013	31-20130094								Complainant allege denial of employment was discriminatory on the basis of race, color, and arrest record.	DHR Complaint	Bailey, Jareld	\$5,000	DHR found "probable cause"; issue of fact re: whether arrest record and race were a factor in decision to not hire. DHR mediation: settled in advance of a hearing; no hiring.
										Total paid as to claims originally filed or paid in 3 2013		\$24,250		
Payments in 2013 re: cases filed prior to 2013														
1	2/9/2009	31-20090033								Charging party alleged disciplinary measures were discriminatory (race, national origin, age).	EEOC Complaint	Ilogu, Nkechi	\$67,500	EEOC found cause for retaliation; charging party filed suit in WDNY; Settlement: \$28,000 from ECSO payroll for back wages; \$25,000 for attorneys fees; \$14,500 to Complainant; plus a legislative proclamation commending her years of service.
										Total paid as to claims paid in 2013, which were filed in 1 2009		\$67,500		

Repeated discrimination against an individual based on:													
Date claim opened	our file #	Sexual misconduct	Blatant racial bigotry	Race	Gender	Ethnicity	Sexual Orientation	Disability	Any other protected class	Original Notice of Claim	Plaintiff Details	Payment amount	Disposition of the case
2014													
1	3/26/2014	31-20140013								Federal lawsuit re: strip search policy and interference with religion (deprivation of services.)	WDNY Summons and Complaint		inmate name stricken to maintain privacy (Executive Session.) \$750 ECSO obtained services of a "backup" imam; settled.
2	6/3/2014	12-20140092								Charging party alleged wrongful termination; had hired on as a DEP clerk; after hire, indicated a 20# lifting restriction but the job required lifting up to 50#; employment terminated.	EEOC Complaint	Yager, Claire	EEOC determined there was wrongful termination; the charging party filed federal lawsuit in WDNY; settled. Had already returned to County employment in another position. \$20,000
3	12/2/2014	22-20140019								Claimant alleged discipline (re: allegation of leaking a legislative memo and legislator's cell number) was defamatory and a violation of due process.	Notice of Claim	Gregg, Susan	Settlement for \$2,500 from Risk plus reinstatement of three (3) days lost pay (\$489.09.) \$2,989
									Total paid as to claims originally filed or paid in 3 2014			\$23,739	
Payments in 2014	re: cases filed prior to 2013												

1	8/17/2011	32-20110014	Department of Social Services							x	Complainant alleged discrimination on the basis of disability.	DHR Complaint	Pascale, Margaret	\$8,443	DHR found failure to engage in interactive process re: request for accommodation. Judgment: \$2,500 award to the employee (\$2,814.38 with post-appeal interest; the appellate court had reduced this from the original award of \$10,000) plus \$5,000 fine paid to the DHR (\$5,628.77 with post-appeal interest.)
2	8/16/2010	31-20100060	Erie County Sheriff's Office							x	Complainant alleged discrimination on the basis of disability.	DHR Complaint	Colpoys, Donald	\$47,194	DHR found "probable cause"; Complainant filed in WDNy; case survived motion to dismiss; pre-discovery settlement: \$30,000 to plaintiff; \$10,000 back wages; attorneys fees \$7,194.)
3	5/13/2011	3-20110008	County Executive								Plaintiff alleged wrongful termination based on §1983 (civil rights, protected speech -- political affiliation.)	Lawsuit	Olma, Gregory	\$10,000	Complainant filed in WDNy; case survived motion to dismiss; pre-discovery settlement: \$10,000 to plaintiff; return to County employment.
											Total paid as to claims filed 3 in 2010, 2011, paid in 2014		\$65,637		
<u>Repeated discrimination against an individual based on:</u>															
<u>Date claim opened</u>	<u>our file #</u>			<u>Sexual misconduct</u>	<u>Blatant racial bigotry</u>	<u>Race</u>	<u>Gender</u>	<u>Ethnicity</u>	<u>Sexual Orientation</u>	<u>Disability</u>	<u>Any other protected class</u>	<u>Original Notice of Claim</u>	<u>Plaintiff Details</u>	<u>Payment amount</u>	<u>Disposition of the case</u>
2015															



1	2/6/2015	12-20150010	Department of Environment & Planning							Complainant alleged disciplinary suspension was discriminatory on the basis of disability; multiple allegations re: failure to promote were retaliatory for prior complaints and discriminatory on the basis of disability; disciplinary written warning was discriminatory on the basis of disability; issuance of a Memo of Counseling was discriminatory on the basis of disability and retaliatory; disciplinary suspension was issued for discriminatory and or retaliatory purposes; failures to transfer was retaliatory for prior complaints and discriminatory on the basis of disability.	DHR Complaint	Moorhouse, Norman	DHR found "probable cause"; matter concluded on Day 1 of the \$1,000 hearing before the DHR ALJ.
2	3/6/2015	15-20150002	ECC							Claimant posted derogatory statements about faculty on Facebook; alleged harassment and civil rights violations arising when the College barred her from attending the nurse "pinning" ceremony and graduation.	Notice of Claim	Hanley, Linda	College permitted her to attend graduation; settled the claim in \$1,500 advance of taking a 50-h examination.
3	3/25/2015	6-20150006	Erie County Sheriff's Office							Claimant terminated; a later ruling held he was not on probation at time of termination; brought this action for defamation, lack of due process, and tortious interference with contractual relationship (hiring on with the NYS Troopers.)	Notice of Claim	Koschuk, Peter	in a separate Article 75/Labor proceeding (31-20150013), the probationary employee's termination was reversed as untimely; settled the instant matter at a WDNY mediation for wage \$20,000 replacement.

<u>Date claim opened</u>		<u>our file #</u>			<u>Repeated discrimination against an individual based on:</u>						<u>Original Notice of Claim</u>	<u>Plaintiff Details</u>	<u>Payment amount</u>	<u>Disposition of the case</u>		
				<u>Sexual misconduct</u>	<u>Blatant racial bigotry</u>	<u>Race</u>	<u>Gender</u>	<u>Ethnicity</u>	<u>Sexual Orientation</u>	<u>Disability</u>	<u>Any other protected class</u>					
4	4/30/2015	32-20150012	Department of Social Services	x								Executive session:				
												Complainant alleged that a former DSS caseworker sexually harassed her in the course of an investigation.	Notice of Claim	DSS recipient name stricken for privacy (Executive session.)	\$25,000 Settled.	
5	6/17/2015	13-20150098	Department of Public Works									Complainant alleged termination was discriminatory (disability, military status [retired reservist]; exercising his rights under the FMLA), §1983 and retaliatory.	Notice of Claim	Zawodzinski, Gary	\$240,000	County's motion to dismiss filed in WDNY; Complainant's cross-motion to amend Complaint also filed; lawsuit settled while a decision was pending. Settlement: withdrawal of a labor grievance pending arbitration re: whether there was "just cause" for termination; \$170,000 plus \$70,000 in wage replacement from DPW.
6	11/18/2015	3-20150030	Central Police Services									Claimant alleged termination was discriminatory (§1983 - right to association) and retaliatory.	Notice of Claim	Lazarz, Kristen	\$35,000	Settled.
												Total paid as to claims 6 originally filed in 2015			\$322,500	

1	2/3/2016	31-20160008	Erie County Holding Center								Plaintiff's employment terminated for dangerous contraband (cell phone in secure portion of the jail facility); termination upheld by labor arbitrator; filed \$1983 claim re: Equal Protection (gender discrimination.)	WDNY Complaint	Burvid, Jodi	\$17,025	Pre-discovery mediation: settled. Risk paid \$5,000; ECSO paid \$12,024.81 for wage replacement; no return to County employment.
2	2/10/2016	32-2016004	Department of Social Services			x					Complainant asserted failure to promote was discriminatory (race.)	DHR Complaint	Bryant, Melinda	\$2,000	DHR found "probable cause"; settled at mediation in advance of appearance for a 2-day hearing before an ALJ.
3	3/10/2016	32-20160009	Department of Social Services			x			x		Complainant asserted discrimination on the basis of disability, race, and retaliation arising from filing prior DHR Complaint (10/29/15.)	DHR Complaint	Cole, Annette	\$1,750	DHR found "probable cause"; settled at mediation in advance of appearance for a 2-day hearing before an ALJ.
											Total paid as to claims originally filed in 2016		\$20,775		
2017															
Repeated discrimination against an individual based on:															
	<u>Date claim opened</u>	<u>our file #</u>		<u>Sexual misconduct</u>	<u>Blatant racial bigotry</u>	<u>Race</u>	<u>Gender</u>	<u>Ethnicity</u>	<u>Sexual Orientation</u>	<u>Disability</u>	<u>Any other protected class</u>	<u>Original Notice of Claim</u>	<u>Plaintiff Details</u>	<u>Payment amount</u>	<u>Disposition of the case</u>
1	5/10/2017	15-20170013	SUNY-Erie		x	x					Claimant alleged wrongful termination due to discrimination (age, gender) and retaliation.	Notice of Claim	Greco, Nicole	\$3,000	Settled in advance of filing with DHR.
Exhibit A												Executive session:	>	<	
											Total paid as to claims originally filed in or paid in 2017		\$3,000		
Payments in 2017 re: cases filed prior to 2013															

1	6/15/2010	35-20100002	Youth Detention Services							x	Charging party alleged discrimination (age, disability: failure to reinstate or grant reasonable accomodation.)	EEOC Complaint	Grant, Linda	\$450,000	EEOC found probable cause on the disability discrimination charge (County's lack of interactive process re request for accomodation); lawsuit filed in WDNY; matter survived a motion for summary judgment; settled in advance of trial. \$450,000: \$250,000 plus \$200,000 in wage replacement.
2	8/6/2010	31-20100063	Erie County Sheriff's Office				x		x	x	Complainant alleges discrimination (age, gender - female, sexual orientation) and retaliation; and breach of contract arising from prior settlement of a 2007 DHR matter.	DHR Complaint	Kretzman, Jacqueline	\$239,000	DHR found "no probable cause" on discrimination claim; filed in WDNY; court dismissed the discrimination claims but the breach of contract claim survived a motion for summary judgment; settled in advance of trial. \$239,000: \$200,000 in wage replacement plus \$39,000.
											Total paid as to claims originally filed in 2010, paid in 2017			\$689,000	

Exhibit B

	<u>Date claim opened</u>	<u>our file #</u>		<u>Sexual misconduct</u>	<u>Repeated discrimination against an individual based on:</u>						<u>Plaintiff Details</u>	<u>Payment amount</u>	<u>Disposition of the case</u>
					<u>Blatant racial bigotry</u>	<u>Race</u>	<u>Gender</u>	<u>Ethnicity</u>	<u>Sexual Orientation</u>	<u>Disability</u>			
	2013												
											Executive session for names below:		
1	3/5/2013	31-20130016	Erie County Sheriff's Office									\$0	County prevailed on motion to dismiss Complainant's federal lawsuit in the WDNY as untimely.
2	8/14/2013	35-20130003	Erie County Youth Services Department	x		x	x					\$0	DHR found "no probable cause" on two complaints of discrimination on the basis of race, sex, sexual harassment, and claim that discipline was retaliatory; EEOC issued "right to sue" letters. Complainant filed federal lawsuit in WDNY. A settlement of another DHR complaint also withdrew this federal lawsuit. The WDNY later granted the County's motion to dismiss.
3	5/15/2013	31-20130054	Erie County Sheriff's Office									\$0	County prevailed; DHR found "no probable cause" and dismissed action. No opportunity afforded for a return to prior job.
4	7/25/2013	31-20130066	Erie County Sheriff's Office									\$0	Complaint to the State Dep't of Labor that her termination of employment was pretextual for her complaints about workplace safety. County prevailed; DHR found "no probable cause"; dismissed action. No opportunity afforded for a return to prior job.
5	5/28/2013	7-20130013	Erie County Clerk's Office									\$0	Complainant alleged termination of employment was discriminatory because of creed or religion. County prevailed; DHR found "no probable cause"; dismissed action. No opportunity afforded for a return to prior job.

6	6/3/2013	32-20130017	DSS - Youth Detention Center							Complainant alleged lack of reasonable accomodation was discriminatory because of sex (sexual harassment), disability, and opposed discrimination or retaliation.			\$0	County prevailed; DHR found "no probable cause"; dismissed action.
7	6/12/2013	31-20130059	Erie County Sheriff's Office							Charging party alleged differential treatment on the grounds of sex (gender: female).			\$0	EEOC found "probable cause" as to disparate treatment charge; US DOJ declined to file suit; matter concluded without further action.
8	7/16/2013	17-20130080	Department of Health							Charging party alleged disciplinary action was discriminatory because of retaliation; County Division of EEO found no basis to proceed; Charging Party filed this action with EEOC.			\$0	EEOC proceeded no further; matter closed.
9	8/1/2013	31-20130072	Erie County Sheriff's Office							Claimant alleged various offenses including §1983 (religious freedom.)			\$0	Claimant did not perfect his claim; file closed.
10	9/11/2013	31-20130080	Erie County Sheriff's Office						x	Complainant's employment was terminated after "Illness Leave Without Pay" for 1 year; filed a lawsuit in federal court alleging §1983 violation of due process; §1985 Conspiracy to deprive an individual of rights; §1986 Failure to prevent the deprivation of an individual's rights.			\$0	County prevailed on motion to dismiss Complainant's federal lawsuit in the WDNY for failure to state a claim; County further prevailed on appeal to the Second Circuit. No opportunity afforded to return to prior job.
11	9/30/2013	28-20130121	Department of Public Works							Complainant alleged reduction of job responsibilities was a discriminatory action arising from opposed discrimination or retaliation and age discrimination.			\$0	County prevailed; DHR found "no probable cause"; dismissed action.

12	10/3/2013	28-20130123	Department of Public Works								Complainant alleged disciplinary action was a discriminatory action arising from opposed discrimination or retaliation and age discrimination.		\$0	County prevailed; DHR found "no probable cause"; dismissed action.
13	11/7/2013	28-20130137	Department of Public Works								Complainant alleged disciplinary action was a discriminatory action based on race and opposed discrimination or retaliation.		\$0	EEOC found "probable cause"; in January 2016, Complainant filed suit with two other claimants (see below); matter is scheduled for trial in May 2018.
14	11/20/2013	12-20130266	Department of Environment & Planning								Complainant alleged disparate treatment based on sex (gender female.)		\$0	County prevailed; EEOC found "no probable cause"; dismissed action.
Repeated discrimination against an individual based on:														
	<u>Date claim opened</u>	<u>our file #</u>		<u>Sexual misconduct</u>	<u>Blatant racial bigotry</u>	<u>Race</u>	<u>Gender</u>	<u>Ethnicity</u>	<u>Sexual Orientation</u>	<u>Disability</u>	<u>Any other protected class</u>		<u>Payment amount</u>	<u>Disposition of the case</u>
	2014													
15	2/25/2014	32-20140005	Department of Social Services								Claim for, <i>inter alia</i> , discrimination (protected class unspecified) regarding handling by Child Protective Services		\$0	Claimant did not perfect his claim; file closed.
16	5/12/2014	27-20140006	Department of Probation								Claim with NYS DHR for alleged retaliation by Probation Department employees.		\$0	County prevailed; DHR dismissed for lack of jurisdiction.
17	3/26/2014	31-20140014	Erie County Sheriff's Office				x				ECHC inmate alleged he was sexually harassed during a strip search.		\$0	County prevailed; City Court granted motion to dismiss.
18	1/9/2014	35-20140001	DSS - Youth Detention Center								Employment terminated; then filed this complaint alleging include discrimination based on race or color and opposed discrimination or retaliation.		\$0	County prevailed; DHR found "no probable cause."



19	2/4/2014	17-20140006	Department of Health												Claim of disparate treatment on the basis of race or color, and sex (gender female.) Charging party alleged the reason for his termination (converted to a long-term suspension by a labor arbitrator) was pretextual; that he was terminated in retaliation for being listed as a witness for another employee's EEOC mediation (see Reid v. DPW.)			\$0	County prevailed; DHR found "no probable cause."
20	2/12/2014	28-20140014	Department of Public Works												Charging party alleged the reason for his termination (converted to a long-term suspension by a labor arbitrator) was pretextual; that he was terminated in retaliation for being listed as a witness for another employee's EEOC mediation (see Reid v. DPW.)			\$0	The EEOC found "reasonable cause"; issued a Dismissal and Notice of Rights; charging party filed a lawsuit (see below: Reid, Palmeri & Ricotta v. County of Erie filed in January 2016.)
21	2/19/2014	28-20140022	Department of Public Works												Charging party alleged the reason for his termination (converted to a long-term suspension by a labor arbitrator) was pretextual; that he was terminated in retaliation for being listed as a witness for another employee's EEOC mediation (see Reid v. DPW.)			\$0	The EEOC found "reasonable cause"; issued a Dismissal and Notice of Rights; charging party filed a lawsuit (see below: Reid, Palmeri & Ricotta v. County of Erie filed in January 2016.)
22	3/31/2014	31-20140015	Erie County Sheriff's Office												Charging party alleged retaliation arising from prior 2013 EEOC complaint (see above, 31-20130059) with respect to how her vacation time was handled while on disability.			\$0	County prevailed; EEOC closed its file.
23	4/4/2014	8-20140001	Office for the Disabled												Complainant denied a replacement handicapped parking tag from Town of OP; complained to the County's Office for the Disabled which outlined for Complainant what documentation she should supply to the Town; complainant filed this action with the NYS DHR against the Office for the Disabled.			\$0	County prevailed; NYS DHR found "no reasonable cause"
24	6/2/2014	12-20140133	Department of Environment & Planning												Charging party alleged retaliation arising from filing the earlier EEOC charge (see 12-20140092.)			\$0	County prevailed; the EEOC dismissed the claim.

25	5/28/2014	32-20140012	Department of Social Services							Claimant alleged employment discrimination on the basis of race, sex, religion, national origin, physical disability and age.		\$0	No action taken; claimant subject to a court injunction requiring him to obtain the court's permission before filing any more lawsuit.
26	7/14/2014	31-20140044	Erie County Sheriff's Office							Charging party alleged employment discrimination on the basis of arrest/conviction record.		\$0	County prevailed; DHR found "no probable cause."
27	7/15/2014	12-20140152	Department of Environment & Planning							Charging party alleged discrimination on the basis of disability.		\$0	EEOC determined the County denied a reasonable accommodation; DOJ declined to sue; charging party did not file a lawsuit. Claim expired.
28	7/15/2014	17-20140081	Department of Health							Complainant alleged discrimination on the basis of disability.		\$0	Complainant withdrew the complaint.
29	7/22/2014	31-20140049	Erie County Sheriff's Office							Complainant exhausted FMLA time as an alternative to working forced overtime; alleged discrimination on the basis of disability.		\$0	EEOC determined the County denied a reasonable accommodation; DOJ did not pursue; charging party did not file a lawsuit.
30	8/21/2014	32-20140016	Department of Social Services							Complainant claimed disciplinary action was discriminatory on the basis of disability.		\$0	EEOC closed their file; charging party did not file a lawsuit. Claim expired.
31	9/8/2014	32-20140017	Department of Social Services	x						Charging party claimed termination of probationary employment was discriminatory and retaliatory for her complaints of unwanted attention.		\$0	EEOC closed their file; charging party did not file a lawsuit. Claim expired.
32	11/26/2014	32-20140025	Department of Social Services							Charging party claimed lack of promotion was discriminatory on the basis of age.		\$0	The EEOC issued a Dismissal and Notice of Rights; charging party did not file a lawsuit. Claim expired.
33	12/30/2014	31-20140085	Erie County Sheriff's Office					x		Complainant claimed discipline and change of assignment was discriminatory on the grounds of sexual orientation (heterosexual.)		\$0	DHR reported that the employee withdrew the complaint.
34	12/30/2014	17-20170140	Department of Health					x		Complainant claimed discipline and disparate treatment was discriminatory on the grounds of sexual orientation.		\$0	DHR reported that the employee withdrew the complaint.

Repeated discrimination against an individual based on:												
<u>Date claim opened</u>	<u>our file #</u>		<u>Sexual misconduct</u>	<u>Blatant racial bigotry</u>	<u>Race</u>	<u>Gender</u>	<u>Ethnicity</u>	<u>Sexual Orientation</u>	<u>Disability</u>	<u>Any other protected class</u>	<u>Payment amount</u>	<u>Disposition of the case</u>
2015												
35	1/5/2015	31-20150002								Employee filed a NDC alleging wrongful detention and violation of civil rights arising at the Buffalo City Court lock-up at 50 Delaware Ave.	\$0	Statute of limitations expired without suit.
36	2/5/2015	32-20150008							x	Applicant alleged discrimination on the basis of disability re: assistance to complete application for benefits.	\$0	We responded to the NYS OTDA factual inquiry; complainant withdrew complaint.
37	3/20/2015	35-20150001								Employee alleged denial of participating in annual shift-bid as discriminatory on the basis of receipt of workers compensation benefits. Charging party alleged that failure to select her for Intake Officer post was disparate treatment on the basis of gender (female) and alleged other gender-disparate treatment.	\$0	Matter dismissed by the Workers Compensation Board ALJ.
38	4/14/2015	6-20150010								Complainant alleged termination of employment was discriminatory on the basis of gender (female.)	\$0	The EEOC issued a Dismissal and Notice of Rights; charging party did not file a lawsuit. Claim expired.
39	4/22/2015	35-20150002								Complainant alleged that DSS, Town of OP, OP Police Department, various OP police officers, OP FOIL Appeals Officer, DSS Commissioner, various DSS employees, and County FOIL Appeals officer, harassed her in the course of an investigation.	\$0	County prevailed; DHR found "no probable cause."
40	5/1/2015	32-20150013									\$0	County's motion to dismiss granted; ruling upheld by Appellate Division of the Fourth Department.

41	6/18/2015	6-20150014	Erie County Sheriff's Office								Plaintiff alleged discrimination on the basis of disability.		\$0	County prevailed; WDNY judge dismissed for plaintiff's failure to comply with court instruction.
42	6/29/2015	31-20150046	Erie County Sheriff's Office						x		Charging party alleges that declining to transfer him to another unit was discriminatory (gender preference, marital status), and retaliatory.		\$0	Served a response to the EEOC; still awaiting agency action.
43	7/23/2015	32-20150022	Department of Social Services								Complainant alleged that the County, DSS, DSS Commissioner, various DSS employees, and County FOIL Appeals officer, harassed her in the course of an investigation.		\$0	County prevailed; County's motion to dismiss granted.
44	8/12/2015	27-20150013	Department of Probation								Complainant alleged that his termination was discriminatory on the basis of race/color, sex, and sexual orientation (same gender.)		\$0	County prevailed; DHR found "no probable cause."
45	8/12/2015	31-20150055	Erie County Sheriff's Office								Complainant alleged that the decision to not hire him was discriminatory on the basis of race/color.		\$0	County prevailed; DHR found "no probable cause."
46	8/27/2015	26-20150006	Office of Personnel								Complainant alleged that her seniority date is listed incorrectly and alleged this is discriminatory on the basis of sex (female), disability, age, and is retaliatory.		\$0	County prevailed; DHR found the complaint was untimely.
47	9/22/2015	6-20150017	Erie County Sheriff's Office								Complainant was subject to non-disciplinary counseling re: violation of rules; EEOC issued Notice of Charge (but not the Complaint) on the basis of age and gender discrimination.		\$0	County prevailed; Notice of Charge withdrawn.

48	10/20/2015	31-20150033	Department of Social Services							Complainant alleged 1) he was approached by two ECSO deputies re: their inquiry; 2) he did not get the 3 weeks vacation he requested; 3) he was issued a written disciplinary warning for leaving the building without permission; 4) lack of notice before the hearing re: #3; and that these arose on the basis of age discrimination.			\$0	County prevailed; DHR found "no probable cause."
49	10/20/2015	29-20150016	Department of Purchasing							Complainant alleged 1) she was counseled about absences; 2) that her pay was lower than that of Caucasian women in her department; 3) she was denied a promotion; 4) she was counseled about entering her time into the Sharepoint System; and that these issues were discriminatory on the basis of race and were retaliatory.			\$0	County prevailed; the EEOC issued a Dismissal and Notice of Right to Sue; charging party did not file a lawsuit. Claim expired.
50	10/20/2015	28-20150107	Department of Public Works							Complainant alleged that he was not awarded an opportunity to transfer from Dep't of Environment and Planning/Sewers to a promotion within the Department of Public Works/Buildings and Grounds, and that this was discriminatory on the basis of disability and was retaliatory.			\$0	County prevailed; DHR found "no probable cause."
51	10/21/2015	31-20150067	Erie County Sheriff's Office							Complainant alleged that she was harassed, subjected to increased scrutiny, denied a light-duty accommodation; this was discriminatory on the basis of gender, pregnancy, disability and was retaliatory.			\$0	County prevailed after a 7-day hearing; DHR Administrative Law Judge dismissed the claim.

52	10/29/2015	32-20150035	Department of Social Services								Complainant alleged she was denied a promotion on the basis of race, disability and age (#1 of 4 complaints to the DHR) employee's physician would only permit him to return to work with restricted duty (no ladders); employee alleged that the County denying him to return to work was pretextual and retaliatory for his previously filing an EEOC complaint.		\$0	County prevailed; DHR found "no probable cause."
53	11/12/2015	28-20150121	Department of Public Works								Complainant alleged progressive disciplinary events were discriminatory on the basis of age.		\$0	Claim withdrawn. County developed an updated job description which was submitted to the employee's physician. Based on the updated job description, the physician then released the employee to work with no restrictions.
54	12/1/2015	32-20150040	Department of Social Services								Complainant alleged "last chance agreement" and termination during his probationary period was discriminatory on the basis of gender (male).		\$0	County prevailed; DHR found "no probable cause."
55	12/2/2015	17-20150068	Department of Health								Claimant alleged demotion from a temporary appointment was unlawful and discriminatory (\$1983, political affiliation.)		\$0	County's motion to dismiss granted; County prevailed on appeal to the Appellate Division of the Fourth Department.
56	12/22/2015	32-20150041	Department of Social Services										\$0	
Repeated discrimination against an individual based on:														
	<u>Date claim opened</u>	<u>our file #</u>		<u>Sexual misconduct</u>	<u>Blatant racial bigotry</u>	<u>Race</u>	<u>Gender</u>	<u>Ethnicity</u>	<u>Sexual Orientation</u>	<u>Disability</u>	<u>Any other protected class</u>		<u>Payment amount</u>	<u>Disposition of the case</u>
	2016													
57	1/6/2016		Department of Social Services								Age discrimination		\$0	NYS OTDA issued request for documents; no action since that time.

58	1/6/2016	28-20160004	Department of Public Works		x	x					Multiple plaintiffs: 1) claim that discipline directed to him was race-based and retaliatory: 2-3) claim that their termination was retaliatory for agreeing to be witnesses at an EEOC mediation.		\$0	The Court dismissed the claim for race-based discrimination; now proceeding to trial only on all plaintiffs' retaliation claims. Scheduled for jury trial in May 2018 - WDNY, Magistrate McCarthy. Plaintiffs have requested an adjournment.
59	2/3/2016	27-20160003	Department of Probation			x	x	x			Complainant alleged termination was discriminatory (national origin, gender - female, race/color.)		\$0	County prevailed; DHR found "no probable cause."
60	2/19/2016	15-20160003	SUNY - Erie				x				Charging party alleged discrimination (gender - female) and retaliation re: Performance Improvement Plan and denial of transfer.		\$0	County prevailed; EEOC dismissed.
61	3/8/2016	32-20160006	Department of Social Services					x			Customer asserted discrimination (race) re: denial of benefits.		\$0	DHR denied for lack of jurisdiction.
62	3/9/2016	32-20160007	Department of Social Services								Complainant allege retaliation arising from filing prior DHR Complaint (see above: 10/29/15.)		\$0	County prevailed; DHR found "no probable cause."
63	3/9/2016	32-20160008	Department of Social Services			x					Complainant alleged race discrimination and retaliation arising from filing prior DHR Complaint (see above: 10/29/15.)		\$0	County prevailed; DHR found "no probable cause."
64	3/22/2016	31-20160020	Erie County Sheriff's Office								Unspecified discrimination related to overtime.		\$0	DHR dismissed for lack of jurisdiction.
65	3/22/2016	15-20160019	SUNY-Erie								Complainant alleged discrimination (familial status, use of FMLA.)		\$0	County prevailed; DHR found "no probable cause."
66	3/29/2016	31-20160022	Erie County Sheriff's Office								Inmate claim of religious discrimination re: Ramadan post-sunset meals.		\$0	County prevailed; WDNY dismissed with prejudice.
67	4/28/2016	17-20160020	Department of Health					x			Complainant alleged unwarranted discipline and discrimination (national origin, age) and retaliation (prior grievance for not getting a promotion.)		\$0	County prevailed; DHR found "no probable cause."

68	4/29/2016	15-20160027	SUNY-Erie								Charging party complaint of sexual harassment (gender disparate.)			EEOC dismissed; instant matter filed in WDNY; matter still pending.
69	5/10/2016	13-20160054	Department of Public Works - Highway							x	Complainant allege promotion withheld due to discrimination (disability.)			Employee withdrew his Complaint to the DHR as part of the conclusion of a labor grievance arising out of the same promotion.
70	5/13/2016	32-20160012	Department of Social Services							x	Complainant alleged wrongful termination due to discrimination (disability.)			County prevailed; DHR found "no probable cause." Complainant appealed in state court; County prevailed. Currently: Complainant preparing a Record on Appeal to take this to the Appellate Division of the Fourth Judicial Department.
71	6/3/2016	31-20160038	Erie County Sheriff's Office							x	Claimant's bodily injury claim included assertion that deputy used a racial slur.			Claimant filed Notice of Claim; did not proceed further.
72	6/8/2016	15-20160033	SUNY-Erie								Charging party alleges termination was due to unlawful retaliation for prior complaint (see above re: 3/22/2016.)			DHR found "probable cause." Complainant withdrew the DHR complaint in conjunction with her settlement of a labor grievance arising from the termination, and reinstatement.
73	6/16/2016	32-20160013	Department of Social Services							x	Complainant alleged the County withheld a promotion due to discrimination (race) and retaliation for prior complaint (see above re: 2/10/2016.)			County prevailed; DHR found "no probable cause."
74	6/21/2016	10-20160005	Board of Elections							x	Charging party asserted gender discrimination (male) by a supervisor.			County prevailed; DHR found "no probable cause."
75	7/6/2016	13-20160064	Department of Public Works - Highway							x	Charging party alleged termination was due to sexual harassment (disparate treatment), and retaliatory for being a witness in another employee's lawsuit.			Complainant withdrew the DHR complaint before the DHR issued a ruling; withdrawal was in conjunction with settlement of labor grievance and resignation.
76	7/15/2016	32-20160016	Department of Social Services							x	Complainant alleged discipline was due to unlawful discrimination (age, disability) and retaliation.			County prevailed; DHR found "no probable cause." Complainant filed action in state court; County transferred matter to federal court (17-cv-1070.) County's Motion To Dismiss (pre-answer) is pending.



77	8/5/2016	37-2016002	Erie County Board of Ethics								Claim for, inter alia, unlawful retaliation based on political affiliation.		\$0	Plaintiff withdrew claim for retaliation based on political affiliation; the parties' motions for summary judgment on remaining cause of action are pending in the WDNY.
78	8/5/2016	17-20160032	Department of Health								Complainant alleged termination due to retaliation arising from filing a prior DHR complaint (see above, 4/28/2016.)		\$0	DHR found "probable cause"; DHR hearing scheduled for September 9-10, 2018.
79	8/30/2016	35-20160002	Department of Youth Services						x		Complainant alleged reduced hours were due to disability discrimination.		\$0	Complainant withdrew the DHR complaint in advance of a determination; County agreed to provide scheduling information on the division's mandatory refresher training.
80	9/7/2016	31-20160067	Erie County Sheriff's Office							x	Complainant alleged denial of access to lactation; discriminatory (gender) and retaliatory for prior complaint (see above, 10/21/2015.)		\$0	DHR found "probable cause"; DHR hearing scheduled for June 13-14, 2018.
81	9/8/2016	15-20160050	SUNY-Erie							x	Complainant alleges suspension and termination due to discrimination (race) and retaliation arising from filing a prior DHR complaint.		\$0	County prevailed; DHR found "no probable cause." Complainant filed a <i>pro se</i> action in federal court' County has not yet been served.
82	9/29/2016	19-20160004	Department of Information & Support Services								Complainant alleged involuntary administrative leave due to discrimination (disability.)		\$0	County prevailed; DHR found "no probable cause."
83	11/4/2016	9-20160016	District Attorney's Office								Complainant alleged termination due to discrimination (disability.)		\$0	County prevailed; DHR found "no probable cause."
84	11/21/2016	32-20160023	Department of Social Services							x	Complainant alleged employment action due to discrimination (gender, national origin) and retaliation.		\$0	County prevailed; DHR found "no probable cause."
85	12/19/2016	31-20160094	Erie County Sheriff's Office								Plaintiff alleges discrimination (religious) re: access to services while in disciplinary segregation housing.		\$0	Discovery still pending.

2017												
Repeated discrimination against an individual based on:												
Date claim opened	our file #		Sexual misconduct	Blatant racial bigotry	Race	Gender	Ethnicity	Sexual Orientation	Disability	Any other protected class	Payment amount	Disposition of the case
86	2/2/2017	31-20170007	Erie County Sheriff's Office						x	Charging party alleges wrongful termination due to discrimination (age, disability.)	\$0	County prevailed; EEOC found "no probable cause"; now in suit in WDNY; motion to dismiss is pending.
87	2/15/2017	3-20170003	Central Police Services			x				Complainant alleges wrongful termination due to discrimination (gender - female, pregnancy.)	\$0	Awaiting DHR finding.
88	3/6/2017	15-20170004	SUNY-Erie			x				Charging party alleges wrongful termination due to discrimination (gender - female) and retaliation.	\$0	Matter transferred to EEOC; County prevailed; EEOC found "no probable cause"; now in suit in WDNY; motion to dismiss is pending.
89	3/31/2017	32-20160016	Department of Social Services						x	Plaintiff alleges defamation, violation of civil rights (unspecified), extreme and outrageous conduct.	\$0	WDNY suit (17-cv-00284; removed from state court on 3/31/2017). Mid-discovery.
90	4/5/2017	32-20170005	Department of Social Services							Customer alleges violations of civil rights based on national origin, re: access to translator.	\$0	County withdrew notice of hearing re: alleged program violation directed to the Customer; showed OTDA it's Language Access Plan for Limited English Proficiency individuals including plan for translation services when notified of a need.
91	4/13/2017	32-20170006	Department of Social Services			x				Complainant alleges she heard a sexist remark made by a manager in another department.	\$0	Employee withdrew the complaint before the DHR issued a finding.
92	4/21/2017	15-20170007	SUNY-Erie		x		x			Charging party alleges wrongful action (Performance Improvement Plan) due to discrimination: race, gender (female) and age.	\$0	County prevailed; EEOC found "no probable cause."
93	4/21/2017	31-20170028	Erie County Sheriff's Office		x	x				Charging party alleges wrongful termination due to discrimination (age, disability.)	\$0	County prevailed; EEOC found "no probable cause"; suit filed in WDNY; County's motion to dismiss pending.
94	4/24/2017	31-20170030	Erie County Sheriff's Office							Charging party alleges wrongful termination; unspecified basis.	\$0	No EEOC Complaint served (only a Notice of Charge.)

95	5/16/2017	12-20170157	Department of Environment & Planning							x	Charging party alleges wrongful termination due to discrimination (disability) and retaliation.			County prevailed; EEOC found "no probable cause." Employee filed suit in \$0 WDNY; matter is pending.
96	6/1/2017	31-20170039	Erie County Sheriff's Office							x	Charging party alleges wrongful termination due to discrimination (disability.)			County prevailed; EEOC found "no probable cause." Employee filed suit in \$0 WDNY; matter is pending.
97	7/14/2017	15-20170018	SUNY-Erie							x	Employee alleges job action due to discrimination (disability) and retaliation.			EEOC found probable cause; matter \$0 awaiting referral or filing in WDNY.
98	8/15/2017	32-20170013	Department of Social Services			x				x	Public accomodation: customer asserts lack of access to a public restroom was discriminatory (race and disability.)			DHR found "probable cause"; matter \$0 awaiting a hearing date.
99	8/17/2017	32-20170014	Department of Social Services								Charging party alleges job action due to discrimination (age.)			County prevailed; EEOC found "no probable cause."
100	10/23/2017	7-20170005	Clerk's Office				x	x			Employee alleges subject to a hostile work environment (comments: sexual, skin color, national origin) due to discrimination (color, gender - female, national origin.)			\$0 Awaiting EEOC finding.
101	11/15/2017	7-20170006	Clerk's Office			x		x		x	Employee alleges failure to promote due to discrimination (race/color, disability) and retaliation; amended to include national origin.			\$0 Awaiting DHR finding.
102	11/16/2017	7-20170007	Clerk's Office			x					Employee alleges failure to promote due to discrimination (race, age.)			\$0 Awaiting DHR finding.
103	12/5/2017	28-20170097	Department of Public Works - B&G							x	Employee alleges disparate treatment due to discrimination (national origin, age and disabilities) and retaliation.			\$0 Awaiting DHR finding.



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

DONYALE BELL,

Complainant,

v.

ERIE COUNTY, DEPARTMENT OF SOCIAL  
SERVICES,

Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.  
**10158635**

Federal Charge No. 16GB300725

I, Donyale Bell, residing at 44 Amsterdam Ave., Buffalo, NY, 14215, charge the above named respondent, whose address is 95 Franklin St., Buffalo, NY, 14202 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of opposed discrimination/retaliation.

Date most recent or continuing discrimination took place is 10/24/2012.

The allegations are:

1. I filed prior discrimination complaints against the above named respondent with SDHR, #10154470 on 4/17/12 and #10155764 on 6/26/12. Because of this, I have been subject to unlawful discriminatory actions.

2. On September 29, 2012, Donald Watkins, my supervisor, embarrassed me in front of peers and residents by loudly reprimanding me for leaving the gym area to take a break although my absence was properly covered by a co-worker. I told him I wasn't aware that staff could not take breaks with proper coverage. He told me I couldn't take any more breaks. I then explained to him that I had to take a female emergency bathroom break and left to do so. As a result of this incident, Mr. Watkins sent me home early that day for alleged insubordination and on October 24, 2012, respondent suspended me without pay for 30 working days. I believe respondent subjected me unwarranted discipline and disparate treatment in an attempt to terminate my employment to retaliate against me for filing prior discrimination complaints against them.

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of opposed discrimination/retaliation, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating Title VII of the Civil Rights Act of 1964, as amended (covers race, color, creed, national origin, sex relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

Donyale Bell  
Donyale Bell

STATE OF NEW YORK )  
COUNTY OF ) SS:

Donyale Bell, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

Donyale Bell  
Donyale Bell

Subscribed and sworn to  
before me this 20 day  
of November, 2012

Beverly A. Frescholtz  
Signature of Notary Public

BEVERLY A. FRESCHOLTZ  
Notary Public, State of New York  
No. 01FR8187237  
Qualified in Erie County  
My Commission Expires May 18, 2016

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

Thomas Boyce

Plaintiff

v.

Erie County

Defendant

Civil Action No. 13-CV-619 - S

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Erie County
95 Franklin Street, 16th Floor
Buffalo, New York 14202

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:

Law Office of Lindy Korn
Electric Tower
535 Washington St.
Ninth Floor
Buffalo, NY 14203

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.



Date: 6/14/2013

CLERK OF COURT

Signature of Clerk or Deputy Clerk

This paper received at the Erie County Attorney's Office from David Curtin on the 26 day of July, 2013 at 12:40 a.m. (p.m.) Assistant County Attorney

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
Buffalo Division

THOMAS BOYCE,

PLAINTIFF,

v.

ERIE COUNTY,

DEFENDANT.

This paper received at the  
Erie County Attorney's Office  
from David Carter on  
the 26 day of July, 2013  
at 12<sup>40</sup> a.m./6.m

James Scott  
Assistant County Attorney

**COMPLAINT**

13-CV-00619

Plaintiff Thomas Boyce ("Plaintiff" or "Mr. Boyce") alleges as follows:

**PARTIES**

1. The Plaintiff, Thomas Boyce, is a natural person with a place of residence at Ashton Place Buffalo, NY 14220.
2. Upon information and belief, Defendant Erie County ("Defendant" or "County"), is a municipal entity with offices located at 95 Franklin Street, 16th Floor, Buffalo, New York 14202

**JURISDICTION AND VENUE**

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and as conferred by 42 U.S.C. §§ 12111 et. seq. and §1983.
4. Defendant is subject to the jurisdiction of this Court and venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) as the acts and omissions giving rise to the claims in this complaint occurred within the Western District of New York.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5. Mr. Boyce has exhausted administrative remedies prerequisite to bringing this claim as follows:
6. On June 27, 2012, Mr. Boyce filed a charge of discrimination with the New York Division of Human Rights (DHR) and the Equal Employment Opportunity Commission

(EEOC). The DHR assigned the case number as 10155927. The DHR cross filed the Complaint with the EEOC as Federal Charge No. 16GB203659.

7. The EEOC mailed Mr. Boyce a 'Right to Sue' letter proving that he has exhausted his administrative remedies Under Title VII.

#### **FACTUAL BACKGROUND**

8. Mr. Boyce is a Deputy Sheriff for Erie County.
9. Mr. Boyce works at the Erie County Holding Center.
10. Mr. Boyce has a property interest in his continued employment.
11. Mr. Boyce is a person with a disability under the meaning of the ADA.
12. Mr. Boyce suffers from PTSD acute stress disorder and high blood pressure.
13. The County has been notified many times since 2010 of Mr. Boyce's disability.
14. Mr. Boyce can otherwise perform the essential functions of this job with reasonable accommodation.
15. Historically, the County had allowed officers to split eight hour overtime shifts between them.
16. Defendant has refused to allow Mr. Boyce to use split shifts to cover the overtime.
17. On July 27, 2011 Mr. Boyce presented a doctor's note with medical restrictions to Chief Rodriguez.
18. The medical restrictions included not working more than 48 hours a week with a maximum shift of 12 hours per day.
19. Chief Rodriguez informed Mr. Boyce that he would no longer be allowed to work any overtime until he was taken off of medical restrictions.
20. After informing Defendant of these medical restrictions Mr. Boyce was harassed and mocked by fellow officers.



21. When calling in sick to use FMLA leave Mr. Boyce was further harassed and mocked by superiors and peers.
22. Defendant also began issuing Mr. Boyce "records of counseling" for not attending trainings that were scheduled off his regular shift.
23. Defendant refused to either reschedule him or allow him overtime to attend these trainings.
24. Upon information and belief the overtime necessary to attend these trainings would have complied with Mr. Boyce's medical restrictions.
25. Defendant also began issuing Mr. Boyce "records of counseling" for not attending training that he did attend.
26. Mr. Boyce has a property interest in his continued employment.
27. Upon information and belief the County has the authority to mandate that its deputies work overtime in certain circumstances.
28. Upon information and belief those circumstances are limited to emergencies.
29. The holding center is routinely short-staffed.
30. The short-staffing requires at least 60 overtime shifts per shift.
31. The Sheriff's Department routinely mandates deputies to work overtime multiple times per week.
32. The Sheriff's Department rarely has a shift that does not use mandatory overtime to fill.
33. The use of mandatory overtime is expected on effectively every shift.
34. This does not fit the plain language meaning of emergency.

**FIRST CAUSE OF ACTION**  
**Failure to accommodate in violation of the ADA**

35. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.
36. In order to establish a *prima facie* case of *failure to accommodate discrimination*, a plaintiff must show that “(1) plaintiff is a person with a disability under the meaning of the ADA; (2) an employer covered by the statute had notice of his disability; (3) with reasonable accommodation, plaintiff could perform the essential functions of the job at issue; and (4) the employer has refused to make such accommodations.” *Graves v. Finch Pruyn & Co., Inc.*, 457 F.3d 181, 184 (2d Cir. 2006).
37. Mr. Boyce is a person with a disability under the meaning of the ADA.
38. Mr. Boyce suffers from PTSD, acute stress disorder, and high blood pressure.
39. The County has been notified many times since 2010 of Mr. Boyce’s disability.
40. Mr. Boyce can otherwise perform the essential functions of this job with reasonable accommodation.
41. Historically, the County had allowed officers to split eight hour overtime shifts between them.
42. Split shifts are therefore reasonable.
43. Defendant has refused to allow Mr. Boyce to use split shifts to cover the overtime.
44. Upon information and belief the operation of the mandatory overtime process as currently implemented is illegal.
45. Upon information and belief procedural corrections to the implementation of the overtime policy would both render it compliant with the law and provide an effective accommodation for Mr. Boyce.

46. Defendant has pursued neither accommodation.

**SECOND CAUSE OF ACTION  
Retaliation in Violation of ADA**

47. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.

48. In order to establish a *prima facie* case of retaliation, the Complainant must show (1) he engaged in a protected activity; (2) his employer was aware of this activity; (3) the employer took adverse action against him; and (4) a causal connection exists between the alleged adverse action and the protected activity. *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002).

49. Mr. Boyce engaged in protected activity each time he asked for accommodation to his disability.

50. Defendant was aware of this apparent protected activity because the doctor's notes and requests for accommodations were given to officers within Mr. Boyce's chain of command.

51. On July 27, 2011 Mr. Boyce presented a doctor's note with medical restrictions to Chief Rodriguez.

52. The medical restrictions included not working more than 48 hours a week with a maximum shift of 12 hours per day.

53. Chief Rodriguez informed Mr. Boyce that he would no longer be allowed to work any overtime until he was taken off of medical restrictions.

54. After informing Defendant of these medical restrictions Mr. Boyce was harassed and mocked by fellow officers.

55. When calling in sick to use FMLA leave Mr. Boyce was further harassed and mocked by superiors and peers.
56. Defendant also began issuing Mr. Boyce "records of counseling" for not attending trainings that were scheduled off his regular shift.
57. Defendant refused to either reschedule him or allow him overtime to attend these trainings.
58. Upon information and belief the overtime necessary to attend these trainings would have complied with Mr. Boyce's medical restrictions.
59. Defendant also began issuing Mr. Boyce "records of counseling" for not attending training that he did attend.
60. Because Defendant's officers complained Mr. Boyce's medical restrictions were the reason they had to issue "records of counseling," Defendant acted in a clearly harmful and dissuasive manner towards Mr. Boyce because of his disability.
61. Mr. Boyce is currently on a six-week suspension.
62. Upon information and belief the suspension is based on trumped up and nonsensical charges that were issued because of Mr. Boyce's continued protected activity.

**THIRD CAUSE OF ACTION  
INTERFERENCE in violation of the FMLA**

63. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.
64. In approximately July 2011 Mr. Boyce applied for FMLA leave.
65. Mr. Boyce was granted the use of FMLA leave to avoid working eight hour mandatory overtime shifts.

66. Chief Rodriguez informed Mr. Boyce that he would no longer be allowed to work any overtime until he was taken off of medical restrictions.
67. After informing Defendant of these medical restrictions Mr. Boyce was harassed and mocked by fellow officers.
68. When calling in sick to use FMLA leave Mr. Boyce was further harassed and mocked by superiors and peers.
69. Defendant also began issuing Mr. Boyce "records of counseling" for not attending trainings that were scheduled off his regular shift.
70. Defendant refused to either reschedule him or allow him overtime to attend these trainings.
71. Upon information and belief the overtime necessary to attend these trainings would have complied with Mr. Boyce's medical restrictions and therefore would not required FMLA leave.
72. Upon information and belief Defendant was undertaking these actions as punishment for Mr. Boyce's use of FMLA leave.

**FOURTH CAUSE OF ACTION**  
**§ 1983 Violation of Due Process as provided by the 14<sup>th</sup> Amendment**

73. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.
74. In order to establish a violation of §1983 "two-and only two-allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has

deprived him of that right acted under color of state or territorial law." *Gomez v. Toledo*,  
446 U.S. 635, 640, 100 S. Ct. 1920, 1923, 64 L. Ed. 2d 572 (1980)

75. Upon information and belief Defendant Erie County is a public employer.
76. Mr. Boyce is a Sheriff's Deputy with civil service protections.
77. Mr. Boyce has a property interest in his continued employment.
78. Upon information and belief the County has the authority to mandate that its deputies work overtime in certain circumstances.
79. Upon information and belief those circumstances are limited to emergencies.
80. The holding center is routinely short-staffed.
81. The short staffing requires at least 60 overtime shifts per shift.
82. The Sheriff's Department routinely mandates deputies to work overtime multiple times per week.
83. The Sheriff's Department rarely has a shift that does not use mandatory overtime to fill.
84. The use of mandatory overtime is expected on effectively every shift.
85. This does not meet the plain language meaning of emergency.
86. As it currently operates, the County's mandatory overtime process is illegal.
87. Sheriff's Deputies have a liberty interest to not be compelled to work by the government.
88. Mr. Boyce further suffers from disabilities.
89. Working mandatory overtime, as operated currently by the Sheriff's Department, is detrimental to Mr. Boyce's health.
90. Mr. Boyce has been routinely ordered to work mandatory overtime.
91. These orders force Mr. Boyce to choose between his health and his liberty interest or his property interest.

92. As operated these orders are routinely illegal.

93. The officers of the County who have issued these orders to Mr. Boyce have variously harmed his health and deprived him of his liberty and property interests.

94. These orders have been made under color of law.

**WHEREFORE**, Mr. Boyce respectfully requests this Court to enter an Order:

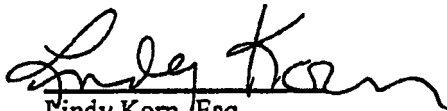
- A. Awarding Mr. Boyce past lost wages and benefits in an amount to be determined at trial;
- B. Awarding Mr. Boyce damages for his pain, suffering, loss of enjoyment of life, humiliation and other injuries in an amount to be determined at trial;
- C. Directing Defendant to pay all unreimbursed medical costs incurred by Mr. Boyce as a result of the stress and anxiety resulting from the discrimination he suffered and the hostile working conditions he endured, including diagnostic analysis, treatment and therapy, and follow up therapy;
- D. Defendant to pay Mr. Boyce the costs of this action, together with reasonable attorneys' fees and disbursements;
- E. Mr. Boyce to have such other and further relief as this Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) Fed. R. Civ. P., Plaintiff hereby demands a trial by jury for all issues triable of right by a jury in this case.

Dated: June 13, 2013

Respectfully submitted,  
Plaintiff Tom Boyce  
By his Attorneys



Lindy Korn, Esq.  
Richard J. Perry, Esq.  
*Attorneys for Plaintiff*  
The Law Offices of Lindy Korn  
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[khovaros@yahoo.com](mailto:khovaros@yahoo.com)





ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

JARELD BAILEY,

Complainant,

v.

ERIE COUNTY, SHERIFF'S OFFICE,

Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.  
**10165554**

Federal Charge No. 16GB400606

I, Jareld Bailey, residing at 133 Hamlin Rd., Buffalo, NY, 14208, charge the above named respondent, whose address is 95 Franklin St., Rm. 1634, Buffalo, NY, 14202 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of race/color, arrest record.

Date most recent or continuing discrimination took place is 8/26/2013.

The allegations are:

1. I am African American and have a prior arrest which was resolved in my favor through a sealed conviction. Because of this, I have been subject to unlawful discriminatory actions.

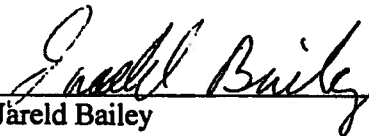
2. In July 2013, respondent interviewed me for the position of Deputy Sheriff/Corrections Officer for which I had applied in April 2009. I was reachable on the list of candidates. At this time, I disclosed my sealed arrest to the interviewers. I believe the interview went well and after the interview, Captain Hartman gave me a number to call if I did not hear from respondent within 10 days time.

3. On August 26, 2013, respondent sent me a letter stating that other candidates had been selected for the vacancies. I believe respondent failed to hire me due to my race/color and my prior sealed arrest record. I am aware that African Americans are under represented in respondent's workforce.

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of race/color, arrest record, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating Title VII of the Civil Rights Act of 1964, as amended (covers race, color, creed, national origin, sex relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

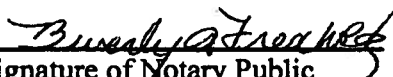
  
\_\_\_\_\_  
Jareld Bailey

STATE OF NEW YORK )  
COUNTY OF ) SS:

Jareld Bailey, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

  
\_\_\_\_\_  
Jareld Bailey

Subscribed and sworn to  
before me this 14 day  
of November, 2013

  
\_\_\_\_\_  
Signature of Notary Public

**BEVERLY A. FRESCHOLTZ**  
Notary Public, State of New York  
No. 01FR8187237  
Qualified in Erie County  
My Commission Expires May 19, 2016

**CHARGE OF DISCRIMINATION**

CHARGE NUMBER  
 FEPA  
 EEOC

This form is affected by the Privacy Act of 1974; see Privacy Act Statement before completing this form.

New York State Division of Human Rights and EEOC  
 (State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)  
 Ms. Nkechi P. Ilogu  
 HOME TELEPHONE NO. (Include Area Code)  
 (716) 631-8028

STREET ADDRESS  
 277 Palmdale Dr.  
 CITY, STATE AND ZIP CODE  
 Williamsville, NY 14221  
 COUNTY  
 Erie

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME  
 ERIE COUNTY SHERIFF'S OFFICE (HOLDING CENTER)  
 NO. OF EMPLOYEES/MEMBERS  
 500 or More  
 TELEPHONE NUMBER (Include Area Code)  
 (716) 858-6869

STREET ADDRESS  
 10 Delaware Avenue  
 CITY, STATE AND ZIP CODE  
 Buffalo, NY 14202  
 COUNTY  
 Erie

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))  
 RACE     COLOR     SEX     RELIGION     NATIONAL ORIGIN  
 RETALIATION     AGE     DISABILITY     OTHER (Specify)  
 DATE DISCRIMINATION TOOK PLACE  
 EARLIEST    LATEST  
 05-16-2008    01-26-2009  
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):  
 I have worked for the Respondent since February 13, 1987. My current position is Registered Nurse. My race and color is Black/African American and my national origin is Nigeria.  
 Beginning about May 16, 2008, and continuing to about January 26, 2009, I have received several disciplinary actions for incidents that allegedly occurred on and after May 16, 2008, including, without limitation, November 2008, December 10, 2008, and January 24-26, 2009. I believe that I was disciplined, which culminated in my being suspended from January 2009 to date, because of my race, color and national origin, in willful violation of Title VII of the Civil Rights Act of 1964, as amended, because other employees who are not Black/African American and not Nigerian, with similar or worse offences/actions, i.e. distributed wrong medications, failed to provide medical care resulting in an inmate's death, use of cell phone when prohibited, etc. have not been disciplined.  
 My supervisor gave me an inappropriate task on December 10, 2008, which I objected to. I complained about the task to my supervisor, stating that "slavery time is over," and that I was not from "South Buffalo." After my complaint, I was subjected to additional disciplines which I believe were in retaliation for having complained about racial harassment, in willful violation of Title VII of the Civil Rights Act of 1964, as amended. I remain on suspension.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

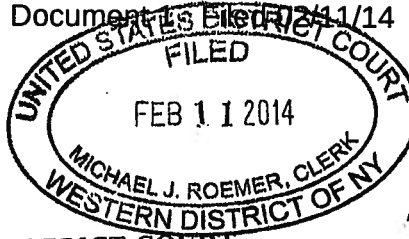
Date \_\_\_\_\_ Charging Party (Signature) \_\_\_\_\_

NOTARY - (When necessary to meet State and Local Requirements)  
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT  
*Nkechi P. Ilogu*

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
 (Day, month, and year) *May 12, 2009*

MELANIE M. PETERSON  
 Notary Public, State of New York  
 Qualified in Erie County  
 My Commission Expires May 24, 2011  
*Melanie M. Peterson*



14 (CV 0087A)

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
(Prisoner Complaint Form)

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. Redacted for inmate privacy
2. \_\_\_\_\_

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed R Civ P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

- |   |                                    |
|---|------------------------------------|
| 1. Sgt. Franklin - ECHC: Jail Management Div. | 4. Laura Darling - ECHC: Physician |
| 2. Thomas Diina - ECHC: Superintendent - JMD  | 5. _____                           |
| 3. Sharon Galbo - ECHC: Physician             | 6. _____                           |

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 NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Redacted for inmate privacy

Present Place of Confinement & Address: 40 Delaware Ave., Bflo., N.Y. 14202

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_

Name of Defendant: Laura Darling  
Position of Defendant: Physician - Erie County Holding Center / Licensed By - Dept. of Health  
Sued In  Individual and/or  Official Capacity  
Address of Defendant: 40, Delaware Ave.; Bflo., N.Y. 14202

**DEFENDANT'S INFORMATION NOTE:** To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Sharon Galbo  
(If applicable) Official Position of Defendant: Physician - Erie County Holding Center / Licensed By - Dept. of Health  
(If applicable) Defendant is Sued in  Individual and/or  Official Capacity  
Address of Defendant: 40, Delaware Ave.; Bflo., N.Y. 14202

Name of Defendant: Thomas Diina - Erie County Holding Center; Jail Management Division  
(If applicable) Official Position of Defendant: Superintendent Erie County Holding Center - Jail Management Division  
(If applicable) Defendant is Sued in  Individual and/or  Official Capacity  
Address of Defendant: 40, Delaware Ave.; Bflo., N.Y. 14202

Name of Defendant: \_\_\_\_\_  
(If applicable) Official Position of Defendant: \_\_\_\_\_  
(If applicable) Defendant is Sued in \_\_\_\_\_ Individual and/or \_\_\_\_\_ Official Capacity  
Address of Defendant: \_\_\_\_\_

**4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT**

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?  
Yes \_\_\_\_\_ No

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:  
Plaintiff(s): \_\_\_\_\_  
Defendant(s): \_\_\_\_\_
2. Court (if federal court, name the district; if state court, name the county): \_\_\_\_\_
3. Docket or Index Number: \_\_\_\_\_
4. Name of Judge to whom case was assigned: \_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes \_\_\_ No \_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

\_\_\_ Dismissed (check the box which indicates why it was dismissed):

\_\_\_ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

\_\_\_ By court for failure to exhaust administrative remedies;

\_\_\_ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

\_\_\_ By court due to your voluntary withdrawal of claim;

\_\_\_ Judgment upon motion or after trial entered for

\_\_\_ plaintiff

\_\_\_ defendant.

**B.** Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes \_\_\_ No X

**If Yes, complete the next section.** NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

\_\_\_\_\_

Defendant(s): \_\_\_\_\_

\_\_\_\_\_

2. District Court: \_\_\_\_\_

3. Docket Number: \_\_\_\_\_

4. Name of District or Magistrate Judge to whom case was assigned: \_\_\_\_\_

\_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes \_\_\_ No \_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

By court for failure to exhaust administrative remedies;

By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

plaintiff

defendant.

### 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- Religion
- Free Speech
- Due Process
- Equal Protection
- Access to the Courts
- False Arrest
- Excessive Force
- Failure to Protect
- Search & Seizure
- Malicious Prosecution
- Denial of Medical Treatment
- Right to Counsel

**Please note that** it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995).

**Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

### Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

**A. FIRST CLAIM:** On (date of the incident) About the 10<sup>th</sup> day of July and about the 7<sup>th</sup> day of August - 2013;  
defendant (give the name and position held of each defendant involved in this incident) Medical Physician's  
Laura Darling and Sharon Galbo

did the following to me (briefly state what each defendant named above did): failed to properly remove 'fishing line'-like, "Continual stitching" from my face. On July 10<sup>th</sup> 2013, Sharon Galbo - while employed at the Erie County Holding Center, attempted to remove stitching in lieu of sending me to outside hospital, after stating she'd never seen "this type" of stitching. On August 7<sup>th</sup> 2013, Laura Darling - while employed at the Erie County Holding Center, attempted to remove continual stitch, under watch of S. Galbo, using scalpel, tweezers and flashlight, vs. sending me to hospital. This malpractice resulted in swelling, pussing, pain, scarring, headaches and the stitching was still, never fully removed.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Medical Malpractice

The relief I am seeking for this claim is (briefly state the relief sought): ~~XXXXXXXXXXXXXXXXXXXX~~  
Fifteen Million Dollars / \$15,000,000.00

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim?  Yes  No If yes, what was the result? Nothing. The Erie County Holding Center received and logged grievance, but no action was taken thereafter  
Did you appeal that decision?  Yes  No If yes, what was the result? Nothing. See Attachment "A"

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

**A. SECOND CLAIM:** On (date of the incident): ~~7/5/13~~ → 7/5/13 (to) 1/22/14  
defendant (give the name and position held of each defendant involved in this incident) The Erie County Holding Center, Jail Management Division, by policy of Superintendent:  
Thomas Diina



did the following to me (briefly state what each defendant named above did): Has allowed full blown strip searches in a manner inconsistent with logic, proper hygiene and minimum standards. Upon admission and after every visit, I have been stripped naked, left standing on bare floor, told to spread my "cheeks" while an officer stands with a flashlight beaming into anal crevice until he is content, then told to turn around, lift buttocks, penis, then told to open mouth and run fingers around the mouth, flashlight beaming into oral cavity until content; meanwhile, you have handled private areas and inserted fingers into mouth - afterwards.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: ~~Not a valid claim~~ Prison Condition - Strip Frisk Procedure

The relief I am seeking for this claim is (briefly state the relief sought): Fifteen Million dollars / \$15,000,000.00

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim? X Yes ✓ No If yes, what was the result? Sgt. Weir stated that he would re-train staff upon proper procedure on frisk/strip search  
Did you appeal that decision? ✓ Yes X No If yes, what was the result? (2) Sergeants pressed me to drop issue, as noticed on Grievance

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: Informal decision "may" solve problem. See attached attachment "B"

If you have additional claims, use the above format and set them out on additional sheets of paper.

**6. RELIEF SOUGHT**

Summarize the relief requested by you in each statement of claim above.

Fifteen Million dollars - First Claim  
Fifteen Million dollars - Second Claim  
Fifteen Million dollars - Third Claim  
Total: \$45,000,000.00

Do you want a jury trial? Yes X No \_\_\_\_\_

**THIRD CLAIM:** On (date of the incident) 7/15/13 - and on: 11/25/13  
defendant (give the **name and position held** of each defendant involved in this incident) Supt. Diina of the Erie County Holding Center; and Sergeant Franklin of the Erie County Holding Center

did the following to me (briefly state what each defendant named above did): failed to afford me a religious observance of Ramadan after request at/ during booking to Dep. Geary as well as written request to Programs Deputy, occurring on 7/15/13 and after no action written request on 7/15/13. Then, between 7/15/13 and today (1/11/14) the facility has failed to offer religious services to muslim populace regularly. I have been deprived Ramadan as well as consistent "Jumrah" service. Service/ Jumrah, is inconsistent due to facility's intentional decision to so deprive service.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Free Speech, Religious Service Deprivation

The relief I am seeking for this claim is (briefly state the relief sought): \$15,000,000.00 / Fifteen Million Dollars

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim?  Yes  No If yes, what was the result? Nothing. Facility Grievance Sgt. Said - The Imam said - deny service outside his presence

Did you appeal that decision?  Yes  No If yes, what was the result? Nothing. - SEE ATTACHMENT 2

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

**If you have additional claims, use the above format and set them out on additional sheets of paper.**

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on January 31<sup>ST</sup> 2014  
(date)

**NOTE:** *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Redacted for inmate privacy

\_\_\_\_\_  
Signature(s) of Plaintiff(s)

FILE 91  
11-25-13  
Re: Not  
consistent  
11-25-13  
having a  
time  
#1409

New York State Commission of Correction



Grievance Form Part I

Facility: Erie County Sheriff's Office—Jail Management Div.  
 Holding Center NY014023C 1403  
 Correctional Facility NY014013C 1402  
 Yankee Compound NY011043C 1410

Housing Location : 1403  
Grievance #: \_\_\_\_\_  
FACILITY ASSIGNS THIS NUMBER

Inmate's Name: Redacted for inmate privacy ICN #: Redacted

Brief Description of the Grievance (Completed by the Grievant) : \_\_\_\_\_ Number of Additional Sheets Attached ( )

Muslims @ the Holding Center are not being afforded services on consistent basis or every Friday or Tummah. Service on Friday/Tummah in Islam is MANDATORY and one is punished if he fails to attend purposely. Religious services for Muslim populace is just as important as Catholic/Protestant ect. which is held on regular basis. The facility has failed to accommodate Muslims in that they have failed to ensure steady observance of Constitutional right to free practice of religion.

Action Requested by the Grievance (Completed by the Grievant) : \_\_\_\_\_ Number of Additional Sheets Attached ( )

That pursuant to Correctional Law 7024-1, an inmate facilitator be allowed to conduct religious services when outside coordinators cannot do so. He must know the prayer, Fajr, Asr, Athan, Khutbah Tahajji and be Muslim for a lengthy period - of which facility records will indicate or facility liaison for Muslims - Amuly Davis, may so select to hold services periodically.

Grievant Signature : Redacted Date/Time Submitted: 11/25/13 (6)

Receiving Staff Signature : J. Tranter #1409 J. Tranter Date/Time Submitted: 11/25/13 1415 Hrs.

Summary of Facility Staff attempts to resolve (Attach Relevant Documentation) : \_\_\_\_\_ Number of Additional Sheets Attached ( )

Above and beyond the scope of this dispute during J. Tranter #1409  
Sgt FRANKLIN SPoke TO INMATE ON 11/25/13. THE INMATE HAS  
STATED THAT HE DOES NOT WANT THE INMATES TO HOLD ISLAMIC  
SERVICES WITHOUT HIS PRESENCE Sgt FRANKLIN

- Language Barrier, List language \_\_\_\_\_ : Name of Interpreter and affiliation \_\_\_\_\_
- Cognitive Disability Barrier, Low literacy: If box is checked, what steps were taken to assist grievant? (List above)

Officer/Supervisor Signature : \_\_\_\_\_ Date/Time : \_\_\_\_\_

( ) I agree to accept the informal resolution to my Grievance

(X) I do not agree to accept the informal resolution to my Grievance

Grievant Signature : Redacted Date/Time Submitted: 11/25/13

Forward to the Grievance Coordinator : Grievance must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature : Sgt FRANKLIN #1409 Date/Time : 11/25/13 1435

Received by the Grievance Coordinator :

Grievance Coordinator Signature : \_\_\_\_\_ Date/Time : \_\_\_\_\_

**ERIE COUNTY SHERIFF'S OFFICE  
JAIL MANAGEMENT DIVISION**

*Dep of Programs*

DEP. SUPT.: \_\_\_\_\_

CLERK: \_\_\_\_\_

SPECIAL SERVICE OFFICER: \_\_\_\_\_

CLINIC: \_\_\_\_\_

OTHER (SPECIFY): \_\_\_\_\_

*1/15* 20 *13* TIME: *9:00* AM/PM HOUSING UNIT: *1-2-1*

NAME: *Redacted* CELL #: *91*

*Redacted*

SIGNATURE: \_\_\_\_\_ BADGE NO.: \_\_\_\_\_

*Please place me in Kawabata*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**IF YOU WISH TO FILE A GRIEVANCE,  
PLEASE REFER TO THE INMATE HANDBOOK  
ON PROPER PROCEDURE TO FILE.**

v. 01/11)

*Attachment 2 (?)*

Complaint/Grievance Form

Facility: Erie County Holding Center: Erie County Sheriff's Dept. Housing Location: E.N.E #91

Name of Inmate: Redacted

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached (0)

I entered E.C.H.C on July 5, 2013, with facial laceration. Stitching was to be removed about the 10<sup>th</sup> day of July. Sharon Galbo, about the 10<sup>th</sup> day of July did not remove all stitching. This caused bleeding, pain, swelling and continual pussing; about the 7<sup>th</sup> day of August, Nurse Practitioner 'Laura' yanked several stitches out under watch of Sharon Galbo. Bleeding, pain, swelling and continual pussing continues because there still exists, stitching in my face.

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached (0)

To be seen at outside hospital for facial X-Ray to determine how much more stitching is beneath scar tissue; of which formed over the existing stitches and breaks through - causing "infection like pussing" - ; so that the stitching can be removed finally and pain, bleeding, pussing and scarring will hopefully - end. August 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> - I requested action sought herein and hope this grievance will achieve that goal.

Grievant Signature: Redacted Date/Time Submitted: 8/19/13

Receiving Staff Signature: [Signature] Date/Time Received: 8-19-13

Summary of facility staff attempts to resolve Number of Additional Sheets Attached ( )  
(Attach relevant documentation)

Spoke with Medical. T/M Redacted called down to medical regarding issues.

I accept this resolution

Grievant Signature \_\_\_\_\_

Officer/ Supervisor Signature [Signature]

I do not accept this resolution and wish to file a formal grievance

Inmate Signature Redacted

\* Must be forwarded to Grievance Coordinator if not resolved within 24 hours of the initial submission

Forwarded to Grievance Coordinator Date \_\_\_\_\_ Time \_\_\_\_\_

Officer/Supervisor Signature \_\_\_\_\_

K Durham 1/20,  
Echo N/E



New York State Commission of Correction  
Grievance Form Part I



Facility: Erie County Sheriff's Office - Jail Management Div.  
 Holding Center NY014023G 1403  
 Correctional Facility NY014013G 1408  
 Yardoo Compound NY011043G 1410

Housing Location: ENE 91

Grievance #: 1416-42  
FACILITY ADDRESS THIS NUMBER

Inmate's Name: Redacted

ICN #: Redacted

Brief Description of the Grievance, Complied by the Grievor:

Number of Additional Sheets Attached ( )

Between the dates of 7/5/13 and ~~11/5/14~~ 1/15/14, I have been subjected to full cavity strip search after visits and also upon admission to the facility and not having been charged with a criminal offense upon admission - have been subjected to: Get fully undressed, lift penis, surreum, "spread cheeks" and run fingers through oral cavity. This procedure is unlawful.

Additional Description of the Grievance, Complied by the Grievor:

Number of Additional Sheets Attached ( )

That frick policy be amended to meet professional standards and less intrusive body searches be conducted vs. intrusive searches now done. At present, I have endured more than 50 cavity searches. The most intrusive on 1/15/14, by Dep: Miller after a visit!

Grievant Signature: Redacted

Date/Time Submitted: 1/21/14

Receiving Staff Signature: K Dur #1365

Date/Time Submitted: 1/21/14 1430hrs

Summary of Facility Staff Response to resolve Grievance (Include Address Documentation):

Number of Additional Sheets Attached ( )

Strip searches are conducted to help prevent dangerous contraband into the facility. Your claim that your body cavities have been searched is unlikely. I will explain to you how a cavity is searched and that the procedure is conducted by a qualified medical professional.

1 Language Barrier, List language: \_\_\_\_\_; Name of interpreter: \_\_\_\_\_

2 Cognitive Disability Barrier, Low literacy: If box is checked, what steps were taken to assist grievor? (List above)

Officer/Supervisor Signature: Sgt Miller

Date/Time: 1/22/14 1347

I agree to accept the informal resolution to my Grievance.

I do not agree to accept the informal resolution to my Grievance.

Grievant Signature: Redacted

Date/Time Submitted: 1/22/14 1400

Forward to the Grievance Coordinator: Grievance must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature: Sgt Miller

Date/Time: 1/22/14 1402

Received by the Grievance Coordinator:

Grievance Coordinator Signature: \_\_\_\_\_

Date/Time: \_\_\_\_\_

NO cavity search took place. Lists to be provided by Sgt Miller regarding six searches 1/22/14 1500  
Redacted 1/22/14 1500

# U.S. Equal Employment Opportunity Commission

**Joe Murphy, Assistant Deputy Commissioner**  
**ERIE COUNTY DIVISION OF SEWERS ENV. & PLANNING**  
95 Franklin Street  
Buffalo, NY 14202

**PERSON FILING CHARGE**

**Clare Yager**

THIS PERSON (check one or both)

Claims To Be Aggrieved

Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

**525-2012-00339**

## NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

Title VII of the Civil Rights Act (Title VII)

The Equal Pay Act (EPA)

The Americans with Disabilities Act (ADA)

The Age Discrimination in Employment Act (ADEA)

The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1.  No action is required by you at this time.
2.  Please call the EEOC Representative listed below concerning the further handling of this charge.
3.  Please provide by a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4.  Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5.  EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **13-JUN-12** to **John Gheringhell, ADR Assistant, at (617) 565-3205**. If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

**Nelida Sanchez,**  
Investigator

EEOC Representative

Telephone **(716) 551-3089**

**Buffalo Local Office**  
**6 Fountain Plaza**  
**Suite 350**  
**Buffalo, NY 14202**  
**Fax: (716) 551-4387**

Enclosure(s):  Copy of Charge

### CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- Race  Color  Sex  Religion  National Origin  Age  Disability  Retaliation  Genetic Information  Other

See enclosed copy of charge of discrimination.

Date  
**May 30, 2012**

Name / Title of Authorized Official  
**John E. Thompson,**  
Local Office Director

Signature  
*John E. Thompson Jr.*



## INFORMATION ON CHARGES OF DISCRIMINATION

### EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

**Section 1602.14 Preservation of records made or kept.** . . . . Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

### NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 207(f) of GINA, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

### NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA  
 EEOC

525-2012-00339

**New York State Division Of Human Rights**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

**Ms. Clare Yager**

Home Phone (Incl. Area Code)

(716) 864-6941

Date of Birth

09-20-1957

Street Address

City, State and ZIP Code

**3260 Seneca Street, #10, West Seneca, NY 14224**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**ERIE COUNTY DIV. OF SEWERS + PERSONNEL DEPT**

No. Employees, Members

Unknown

Phone No. (Include Area Code)

(716) 858-8390

Street Address

City, State and ZIP Code

**95 Franklin Street, Buffalo, NY 14202**

RECEIVED

APR 26 2012

E.E.O.C. BULO

Name

No. Employ. as Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  
 RETALIATION  AGE  DISABILITY  GENETIC INFORMATION  
 OTHER (Specify) **See Attached**

DATE(S) DISCRIMINATION TOOK PLACE

Earliest  
09-16-2011

Latest  
09-16-2011

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I am a qualified individual with a disability. About three years ago I was laid-off from Erie County Department of Health. My name was placed on a "preferred list" to be recalled from layoff. On or about August 8, 2011, Erie County Division of Sewers, Environment and Planning interviewed me for the position of Data Control Clerk. Despite of my disability, I was able to perform my job without reasonable accommodation. However, I still made Charles Katra (Assistant Deputy Commissioner) aware of my disability and limitations. He was the individual who interviewed me for the position. I was granted the job.

I was hired for the Data Processing Control Clerk position on or about September 9, 2011. On September 15, 2011, I gave my immediate supervisor, Charles Young a copy of a notice that I needed to appear at a Worker's compensation hearing on October 6, 2011 for a work related injury that occurred to me in 2009. On September 16, 2011, Mr. Young called me into his office and requested me to fill out and sign a document that asked me to disclose if I had work restrictions and to name them. I filled out the document and signed it. Immediately after I was told that my services were no longer needed.

I applied for unemployment benefits. At the unemployment hearing it was concluded that I was wrongfully terminated, so I was rehired on or about February 2, 2012 to work at the Erie County Comptroller's Office. However, I was not fully compensated for the backpay owed to me since my employment termination until my rehiring. The Erie County Division of Sewers is also misinforming the Erie County Comptroller's Office about the reasons of my termination. I believe that I have been discriminated against because of my disability, in violation of the Americans with Disabilities Act of 1990, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

*Clare Yager*  
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

Date

Charging Party Signature

4-24-12

**Clare Yager**

**EEOC Agency #: 525-2012-00339**

**(Lettering Theme: Div. of Sewers /Personnel Dept.)**

I am a qualified individual with a disability.

**Aug. 13, 2010 - I was laid-off from Erie County Dept. of Health as a Data Processing Control Clerk. My name was place on a "preferred list" to be recalled from layoff.**

**Aug. 8, 2011 - I was interviewed by Charles Katra, E. C. Assistant Deputy Commissioner of Environment & Planning, Division of Sewers, for the position of Data Processing Control Clerk. During the interview, I made Mr. Katra aware of my disability limitations (20lb weight lifting restriction), resulting from an injury (2009) during my employment with the Dept. of Health. After reviewing my job description (attachment); Mr. Katra hired me because I could perform tne job without reasonable accommodations. That there are other employees (laborers) in the dept., that would handle the lifting, if necessary. My job duties were to maintain the supply inventory databases.**

**Aug. 22 2011 - Called Mr. Timothy Benten, E. C. Personnel Dept., Workman's Comp. Risk Manager; requesting copies of reports in my personnel file relating to my workman's comp, ( medical reports, D.P.C.C. Dept. Sewers job description etc., )that I needed before Oct. 6<sup>th</sup>- (W.C. Hearing). Mr. Benten stated he would mail them to me. I never received them.**

**Aug. 25, 2011 - Received notice from NYS Workers' Comp. Board for hearing to be held on Oct. 6<sup>th</sup>, 2011 at 9:00 am for my testimony; in regards to 2009 job related injury case. (attachment)**

**Aug. 31, 2011 - Contacted Mr. Benten again, I was told he would mail them to me. Never receive.**

**Sept. 6, 2011 - I started working at E.C. Sewers Dist. 3, S-3690 Lake Shore Rd., Blasdell, NY. Charles Yung, Sr. Electronics Technician was my supervisor. I was being trained by Dawn Wadsworth, Acct. Clerk Typist, on my job duties while employed there. I was able to perform all duties that were asked of me.**

**Sept. 15, 2011 - I gave my supervisor, Mr. Yung, a copy of notice that I needed attend a Worker's Comp. Hearing on Oct. 6, 2011, in regards to the 2009 job injury.**

**Sept. 16, 2011 - Mr. Yung called me into his office and requested me to fill out and sign a document that asked me to disclose my disability related work restrictions. I did as requested. This document also stated that I was to report to E.C. Dept. of Disabilities or obtain a letter from my doctor stating that I was no longer disabled. Mr. Yung then told me that he didn't want anyone with a disability working for him in his department and that my services were no longer needed. I was then escorted out of the building (attachment).**

RECEIVED

APR 26 2012

E.E.O.C. BULO

**Sept. 18, 2011 - re-opened NYS Unemployment Claim.**

**Sept. 19, 2011 - Received phone call from the NYS Dept. of Labor - Erie County Personnel Dept. had stated that I "quit" my job with the Division of Sewers and denied my UI Benefits. I Faxed NYS copies of Mr. Yung's letter, EC Office of Disability - Susan Sizemore and Civil Service job description.**

***Sept. 19, 2011 - Contacted Mr. Benten again, was told I needed to send a "request in writing" for information in my files. Sept. 20<sup>th</sup> letter was hand delivered to Mr. Benten's office***

***Sept. 20, 2011 - Hand delivered requested letter to Mr. Benten's office.***

**Sept. 20, 2011 - Received letter from NYS Dept. - as per above phone call. (attachment)**

**Sept. 21, 2011 - After review NYS Dept. of Labor re-instated benefits stating that I was illegally dismissed from my Data Processing C. C. position. My Civil Service title does not require lifting limitations.**

**Sept. 23, 2011 - Met with Dr. Rodes, in which he filled out the "E. C. Office for the Disabled Physician Medical Certification for Request for Reasonable Accommodation" form.**

**Sept. 26, 2011 - Met with Susan Sizemore, Executive Director for E. C. Office for the Disabled. At this meeting I was informed that I would have to be able to lift up to 50 lbs., to keep my job in the Dept. of Sewers. And that there was no reasonable accommodation that the County would provide that would enable me to perform the essential functions of the job. That a reasonable accommodation was not warranted and that my case was closed with their office. (attachment)**

***Oct. 3, 2011 - Contacted Mr. Benten in regards to picking up paperwork needed for Oct. 6<sup>th</sup> WC Hearing. No phone called returned.***

***Oct. 10<sup>th</sup> - 21<sup>st</sup>. - Contacted the Personnel Dept. in regards to my name being put back on the "preferred list". After a few calls over a two week period, I was informed that YES, I was back on the "preferred list" for recall.***

***Oct. 14, 2011 - Contacted Mr. Benten in regards to not receiving paperwork that was needed on Oct. 6<sup>th</sup>. He then informed me that he gave my letter to the E. C. Attorney's office. To date (4-20-12), I have never heard from the County Attorney's office, nor have I received paperwork requested.***

**Clare Yager**

**EEOC Agency #: 525-2012-00339**

**Jan. 18<sup>th</sup>, 2012 - Received phone interview from Lorne Steinhart, E. C. Assistant Deputy Comptroller, for a D.P.C.C. position available in the Comptrollers' Office. During that phone call, Mr. Steinhart stated that the Personnel Dept. had informed him that I had a disability and he asked me to disclose my disability and restrictions. Mr. Steinhart offered me the position because I could perform the job without reasonable accommodations.**

**Jan. 19, 2012 - Met with Frank Cammarata- Executive Director E. C. Office Of the Disabled. I was requested to have another Physicians' Medical Cert. completed before Jan. 29<sup>th</sup> or I could not start work (attachment)**

**Jan. 20, 2012 - Met with Pat Scigaj, Comptrollers' Office to pick up paperwork (W-2 forms, medical.) for new position.**

**Jan. 25, 2012 - Apt. with Dr. Rodes - Up to Date Disability Medical Report.**

**Jan. 27, 2012 - Returned paperwork to Pat Scigaj. During this meeting the Personnel Dept. was contacted in regards to start date vs. medical coverage start date. I was informed that as long as I started before the pay period ended (Feb. 3<sup>rd</sup>) that I would receive medical in 30 days (March 1<sup>st</sup>). After Feb. 3<sup>rd</sup> - 60 days (April 1<sup>st</sup>). My start date was set for Feb. 2<sup>nd</sup> (THURS).**

**Jan. 31, 2012 - received letter from Frank Cammarata, Office for the Disabled stating that he would recommend a reasonable accommodation (lifting restriction - 20lbs) until June 30, 2012. That I must have another physical completed by June 26, 2012 or that my request for this reasonable accommodation/position would be terminated. \*attachment**

**Feb. 2, 2012 - Started working in the Comptrollers' Office (to present date).**

**March 1, 2012-Have not received any paperwork in regards to Blue Cross/Blue Shield medical coverage. Contacted Christina Ortolano in regards to this and was informed that I needed to have started work by Jan 30(Mon) - Feb. 1<sup>st</sup> (Wed) to have received medical. Feb. 2 start - I will receive medical in 60 days. I was then informed to have my supervisor, Mr. Steinhart contact her supervisor Mr. Joseph Murphy, Principal Executive Assistant, E.C. Personnel Dept.- that possible he could do something to fix this matter.**

**March 5, 2012 - Mr. Steinhart met with Mr. Murphy to help resolve this matter; trying to get my B.C.B.S. medical activated a.s.a.p. - based on incorrect information given at time of hire by the Personnel Dept. Mr. Steinhart was unsuccessful in re-instating medical for me.**

**Mr. Steinhart then questioned me about my position with the Div. of Sewers- that during his meeting with Mr. Murphy, he was informed that I "quit" my job with that division after two weeks of working there and that they assumed that I was going to "quit" working for the Comptroller's Office. I stated that I did not quit my job, if so then I would not have been placed on a "preferred list". Mr. Steinhart had those same thoughts. I stated that I could bring in paperwork to prove that I was terminated by Mr. Yung, if necessary. He did not request such information.**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Buffalo Local Office**

6 Fountain Plaza, Suite 350  
Buffalo, NY 14202  
(716) 551-4442  
TTY (716) 551-5923  
Direct ADR : (716) 551-3290

**MEDIATION INVITATION RESPONSE FORM**

**Complete and fax or mail this form on or before the mediation response due date**

**Please return by: 6/13/2012**

Your charge has been selected for EEOC's Mediation Program. The Commission is making available to you, this effective, neutral and confidential process to Charging Parties and Respondents as an efficient alternative to investigation and possible litigation of employment disputes. If either side prefers investigation to mediation, please let us know immediately so that we may return your charge back to Enforcement.

Participation in the mediation program is completely voluntary, confidential, non-binding, and at no cost to either party. If however, the parties come to a resolution, the settlement will be upheld by law and will be binding. You may have a representative of your choice with you during mediation sessions, but note that you are not required.

If both parties agree to mediation, we will attempt to schedule an agreeable date. Please be advised that this process takes approximately 4-6 weeks. Once the Respondent agrees to participate in mediation, the due date for the Position Statement is temporarily suspended.

If you have any questions, please contact John Gheringhelli, at (617) 565-3205. If you call and get my voice mail, I ask that you leave a message. Please include your phone number, with area code and charge number. I will get back to you as soon as I'm able. I look forward to hearing from you and encourage you to consider the many benefits of mediation. (See reverse)

**Please return this form to:**

**John Gheringhelli, Mediation Unit  
US Equal Employment Opportunity Commission  
Boston Area Office  
JF Kennedy Federal Building  
Boston, MA 02203-0506**

**Or Fax response to: (617) 565-3196**

**Or email response to: [john.gheringhelli@eoc.gov](mailto:john.gheringhelli@eoc.gov)**

**• FILL IN THE FOLLOWING COMPLETELY \***

**SELECT:**     I/We agree to mediate  
               I/We decline offer to mediate

**I AM THE (SELECT ONE):**     Charging Party / Representative  
                                       Respondent / Representative

**If you decline to participate, we would appreciate your stating the reason for declining:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EEOC Charge No: 525-2012-00339**

**Charge Name:** \_\_\_\_\_ v \_\_\_\_\_

**Name (or Attorney if represented):** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

**Telephone: ( )** \_\_\_\_\_

## **Facts About Mediation**

First and foremost, the EEOC is pleased to invite you to mediate the enclosed charge of discrimination. On the reverse side of this sheet is an **Invitation to Mediate**. Mediation is voluntary; it will not be scheduled unless BOTH parties agree. Mediation is a confidential, off the record attempt to resolve the charge, prior to any investigation or possible litigation. For questions or more information contact Mr. John Gheringhelli, at (617) 565-3205.

Mediation is a form of Alternative Dispute Resolution (ADR) that is offered by the U.S. Equal Employment Opportunity Commission (EEOC) as an alternative to the traditional investigative or litigation process. Mediation is an informal process in which a neutral third party assists the opposing parties to reach a voluntary negotiated resolution of a charge of discrimination. The decision to mediate is completely voluntary for the charging party and the employer. Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up any misunderstandings, determine the underlying interests or concerns, find areas of agreement and charge or impose a decision on the parties. Instead, the mediator helps the parties agree on a mutually acceptable resolution. The mediation process is strictly confidential. Information disclosed during mediation will not be revealed to anyone, including other EEOC employees.

### **How Mediation Works**

An EEOC representative will contact the employee and employer concerning their participation in the program. If both parties agree, a mediation session conducted by a trained and experienced mediator is scheduled. While it is not necessary to have an attorney in order to participate in EEOC's Mediation Program, either party may choose to do so. It is important that persons attending the mediation session have the authority to resolve the dispute(s). If mediation is unsuccessful, the charge is returned to the original investigator and investigated like any other charge.

### **Advantages of Mediation**

- Mediation is an efficient process that saves time and money. Successful mediation avoids a time-consuming investigation and achieves a prompt resolution of the charge. The majority of mediations are completed in one session, which can last from one to five hours.
- Improves Communication
- Mediation is fair. Mediators are neutral third parties who have no interest in the outcome. Their role is to help the parties resolve the charge.
- Mediation is a confidential process. The sessions are not tape-recorded or transcribed. Any and all notes taken during the mediation are collected and destroyed promptly.
- Settlement agreements secured during the mediation do not constitute an admission by the employer of any violation of laws enforced by the EEOC.
- Mediation avoids lengthy and unnecessary litigation.
- Discover the real issues in your workplace
- Everyone wins.

STATE OF NEW YORK: COUNTY OF ERIE

This paper received at the  
Erie County Attorney's Office  
from James Ostrinski on

SUSAN GREGG,

the 8 day of November, 2014  
at 4:54 a.m./p.m.

*Claimant,*

*Cricket Bennett*  
Assistant County Attorney

-against-

**NOTICE OF CLAIM**

THE COUNTY OF ERIE,

*Respondent.*

PLEASE TAKE NOTICE that the Claimant, SUSAN GREGG, hereby files this notice of claim with the County of Erie pursuant to N.Y. County Law § 52 and General Municipal Law Section 50-e.

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

SUSAN GREGG, residing at 332 Adam St., Tonawanda, N. Y. 14150, being duly sworn, deposes and states:

*Name and post-office address of the claimant:* SUSAN GREGG, 332 Adam St., Tonawanda, N. Y. 14150.

*The nature of the claim:* The claim is for defamation under state and federal law (42 USC 1983) and violation of due process and county procedures under state and federal law by the County of Erie and County employees acting within the scope of their employment including County Legislature Chairman John J. Mills.

*The time when, the place where and the manner in which the claim arose:* The claim arose from October 29 through November 6, 2014 when claimant was falsely accused and



wrongly disciplined for allegedly leaking a Republican legislative memo to Democratic legislators and allegedly improperly disclosing the cell phone number of legislator Morton, resulting in his receipt of critical phone call involving the vote on the Amigone Funeral Home crematory. The memo was drafted by Steven Whipple and dated October 17, 2014.

Both allegations are false and without any evidentiary basis whatsoever. Moreover, she was not afforded any due process and she has been provided with no documentation as to how and why she was penalized and by whom.

Nevertheless, on information and belief, Chairman Mill imposed the discipline which included the loss of three days' pay and a bonus for perfect attendance.

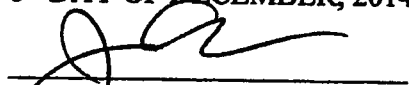
*The items of damage or injuries claimed to have been sustained:* Claimant's damages and injuries include: pain and suffering, anxiety, humiliation, loss of reputation and harm to her occupation, legislative aide, with resulting loss of income, and other benefits, attorneys' fees and other out of pocket expenses. The total amount claimed will be supplied upon demand.

Dated: December 8, 2014  
Buffalo, New York

  
\_\_\_\_\_  
SUSAN GREGG

JAMES OSTROWSKI  
Attorney for Claimant  
63 Newport Ave.  
Buffalo, New York 14216  
(716) 435-8918

SWORN TO BEFORE ME THIS  
8<sup>th</sup> DAY OF DECEMBER, 2014

  
\_\_\_\_\_  
JAMES OSTROWSKI  
Notary Public—State of New York  
Qualified in Erie County  
Commission expires 7/5/2015

RECEIVED *AM*

AUG 01 2011

BUFFALO REGIONAL OFFICE



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

MARGARET PASCALE,

Complainant,

v.

ERIE COUNTY, DEPARTMENT OF SOCIAL  
SERVICES,

Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.  
**10149794**

Federal Charge No. 16GB104017

I, Margaret Pascale, residing at 709 Busti Ave., Buffalo, NY, 14213, charge the above named respondent, whose address is 95 Franklin Street, Buffalo, NY, 14202-3959 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of disability.

Date most recent or continuing discrimination took place is 6/20/2011.

The allegations are:

1. I have a disability within the meaning of the New York State Human Rights Law, (prosthetic leg, and knee problems) which does not prevent me from performing the essential duties of my job in a reasonable manner. Because of this, I have been subject to unlawful discriminatory actions.
2. I was hired by Respondent on May 8, 2000 and currently hold the position of receptionist at the office located at 43 Court Street, Buffalo.
3. In or around the beginning of June 2011, Respondent took away my desk printer as part of a new policy to remove desk printers in order to reduce expenditures. Since then and continuing to date, I have been forced to get up and down several times each day in order to use the central copier/printer, which creates a hardship for me due to my disability.
4. Shortly after it was removed from my desk, I submitted medical documentation of my disability to Respondent and requested the return of my desk printer as an accommodation of it.

By letter dated June 20, 2011, Respondent denied my accommodation request, saying their decision was based, in part, on discussion with my "medical treating staff" which is not true as no one from my doctor's office spoke to Respondent. I believe Respondent denied me a reasonable accommodation of my disability.

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of disability, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating the Americans with Disabilities Act (ADA) (covers disability relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

*Margaret Pascale*

Margaret Pascale

STATE OF NEW YORK )  
COUNTY OF *Erie* ) SS:

Margaret Pascale, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

*Margaret Pascale*

Margaret Pascale

*Margaret Pascale*  
Subscribed and sworn to  
before me this *29<sup>th</sup>* day  
of *July*, 20*11*

*Donna E. Hager*  
Signature of Notary Public

DONNA E. HAGER  
Notary Public, State of New York  
No. 01HA4866438  
Qualified in Erie County  
My Commission Expires August 4, 20*14*

① *MM*



DAVID A. PATERSON  
GOVERNOR

RECEIVED

AUG 11 2010

BUFFALO REGIONAL OFFICE

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of	
DONALD COLPOYS,	Complainant,
v.	
ERIE COUNTY,	Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive  
Law, Article 15

Case No.  
**10142838**

Federal Charge No. 16GB004469

I, Donald Colpoys, residing at 39 Lafayette Blvd.,  
Williamsville, NY, 14221, charge the above named respondent,  
whose address is 95 Franklin Street, Room 1634, Buffalo, NY,  
14202 with an unlawful discriminatory practice relating to  
employment in violation of Article 15 of the Executive Law of  
the State of New York (Human Rights Law) because of disability.

Date most recent or continuing discrimination took place is  
7/2/2010.

The allegations are:

1. I have a disability within the meaning of the New York  
State Human Rights Law, a knee injury, which does not prevent me  
from performing the essential functions of my job in a reasonable  
manner with a reasonable accommodation. Because of this, I have  
been subject to unlawful discriminatory actions.

2. I was hired by the respondent on July 28, 1997 and  
currently hold the job title of deputy. I am assigned to the  
respondent's holding center where I am intake deputy during the  
3:00 P.M. - 11:00 P.M. shift.

3. Because of my disability which I sustained on January 9,  
2006, the respondent has subjected me to differential treatment,  
including, but not limited to, the following. In response to my

medically documented request that my work day be limited to twelve hours as an accommodation for my disability, the respondent instead in March 2010, restricted my work week to forty hours until June 15, 2010, thus effectively preventing me from working overtime hours.

4. Although on April 12, 2010 the respondent granted my medical accommodation request of April 2, 2010 for workdays not to exceed 12 hours, I was still frequently denied the opportunity for overtime hours by Lt. James ~~Kearney~~ <sup>Carney</sup> who told me, "There are no four hour shifts" although he allowed similarly situated employees without disability-related restrictions to work four or fewer overtime hours.

5. On June 15, 2010, I asked the respondent's Susan V. Sizemore to grant me a temporary extension of my accommodation until my next doctor's appointment and she refused. In addition, she asked me if I had ever thought about getting a new job and told me I should get my knee replaced.

6. On June 22, 2010, after my medical accommodation had expired and before I could submit a new request, Lt. ~~Kearney~~ <sup>Carney</sup> forced me to work an eight hour overtime shift directly after my scheduled eight hour shift, which exacerbated my disability, causing pain and extreme swelling of my knee. At approximately 5:00 A.M., Lt. ~~Kearney~~ <sup>Carney</sup> sent a sergeant to take me to the hospital where my knee was ~~drained~~ <sup>X-Rayed</sup> and I was advised not to report to work the next day and to restrict my shifts to twelve hours per day. I had called Lt. ~~Kearney~~ <sup>Carney</sup>.

7. After I submitted a medically documented request for a continuation of the twelve hour daily shift restriction, the respondent restricted me to eight hours per day per letter dated July 2, 2010.

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of disability, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating the Americans with Disabilities Act (ADA) (covers disability relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

Donald Colpoys  
Donald Colpoys

STATE OF NEW YORK )  
COUNTY OF ) SS:

Donald Colpoys, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

Donald Colpoys  
Donald Colpoys

Subscribed and sworn to  
before me this 10 day  
of August, 2010

Karen Dixon  
Signature of Notary Public

**Karen Dixon**  
**#01D16202167**  
**Notary Public, State of New York**  
**Qualified in Erie County**  
**My Commission Expires 03 / 09 / 20 13**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GREGORY B. OLMA  
615 Fillmore Ave.  
Buffalo, New York 14212

Plaintiff,

-against-

**COMPLAINT AND**  
**JURY DEMAND**

CHRIS COLLINS, individually and in his official capacity as  
Erie County Executive,  
CHRISTOPHER M. GRANT, individually and in his official  
capacity as an employee of Erie County,  
JOHN GREENAN, individually and in his official capacity as  
Personnel Commissioner of Erie County.  
GREGORY SKIBITSKY, individually and in his official capacity  
as Commissioner of the Erie County Department of Emergency  
Services,  
THE COUNTY OF ERIE,

Defendants.

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**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the plaintiff GREGORY B. OLMA hereby demands a jury trial of all issues so triable.

**I. INTRODUCTION**

1. This is an action seeking declaratory and injunctive relief, as well as monetary damages, to redress illegal conduct by the defendants, who deprived the plaintiff of various rights and privileges secured by the Constitution and laws of the United States, specifically the First and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1985(3).

16. He had the highest score or tied for the highest score on his civil service exam.
17. On information and belief, JOHN GREENAN delayed release of his score so as to delay his possible permanent appointment to the position.
18. Senior Administrative Assistant is not a policy-making position.
19. Plaintiff's position involved no policy-making duties, minimal contact with the public, and no public contact that involved speaking on behalf of the County.
20. He was not a confidential assistant to a policymaker in the County government.
21. Plaintiff did not have the power to hire or fire, and had no supervisory control over County employees.
22. He had minimal contact with elected officials.
23. He was not in a position of authority in his department and in fact had no subordinates.
24. With respect to preparation of a county budget for 2008, plaintiff's position was recommended for inclusion in the new budget by his department head, the budget director and the County Executive at the time, Joel Giambra. It was then approved by the Erie County Legislature on or about December, 2007.
25. In November 2007, the Republican candidate for County Executive, Chris Collins, defeated James Keane, the Democratic nominee in the general election.
26. The new county executive and his staff, including CHRISTOPHER GRANT, JOHN GREENNAN and GREGORY SKIBITSKY, proceeded to target plaintiff's position for elimination after the budget was passed.
27. Such a move is highly unusual and, on information and belief, had not happened in the prior eight years.



39. Janet L. Vogtli at all times herein was a registered Republican who was active in Republican politics for many years and once served as vice-chairman of the Erie County Republican Party and once ran for State Assemblyman on the Republican line.
40. Vogtli was a heavy donor to Republican causes including to CHRISTOPHER COLLINS' 2007 campaign for County Executive as follows:

\$1,000.00 02-NOV-07 COLLINS FOR OUR FUTURE

\$150.00 28-DEC-07 COLLINS FOR OUR FUTURE

\$90.00 28-OCT-07 COLLINS FOR OUR FUTURE

\$150.00 26-FEB-02 SENATOR VOLKER CAMPAIGN

\$40.00 02-MAR-06 SENATOR VOLKER CAMPAIGN

\$150.00 14-FEB-05 SENATOR VOLKER CAMPAIGN

\$50.00 14-MAR-08 FRIENDS OF TIM HOWARD

\$30.00 26-AUG-08 FRIENDS OF TIM HOWARD

\$50.00 16-DEC-05 FRIENDS OF TIM HOWARD

41. Because of her Republican affiliation, financial support and activism, Janet L. Vogtli was privately assured by CHRISTOPHER GRANT that she would be rehired and that the double layoff was actually designed to mask the elimination of plaintiff's employment for political reasons.
42. CHRISTOPHER GRANT told Vogtli that they "were going to do what we had to do to get rid of Greg Olma but we will protect you."
43. GRANT referred to Olma as a "Democratic political operative."
44. GRANT warned Vogtli not to disclose these communications.
45. Vogtli was in fact later hired by the County in a different department.

53. However, neither the COUNTY OF ERIE nor CHRIS COLLINS properly trained or supervised employees in the importance of protecting the constitutional rights of workers.
54. In the case of CHRIS COLLINS, he also failed to properly supervise his subordinates in their dealings with plaintiff and concerning the elimination of plaintiff's position.
55. In fact, he actively participated in and endorsed the improper elimination of plaintiff's position.
56. In a conversation with county legislator Thomas Mazur, in or about January, 2008, concerning retention of the plaintiff's position, CHRIS COLLINS referred to the plaintiff as politically "toxic."
57. CHRIS COLLINS also failed to stop illegal behavior towards plaintiff that occurred in his presence or that he became aware of through communications with his subordinates.
58. On January 21, 2008, CHRIS COLLINS forwarded to the county legislature a letter with the memo referred to at paragraph 32 requesting that plaintiff's position be eliminated.
59. On or about February 7, 2008, the County Legislature approved the resolution eliminating plaintiff's position from the budget.
60. On February 15, 2008, plaintiff was notified by GREGORY SKIBITSKY that he was being terminated on February 27, 2008. See Exhibit "A".
61. The unlawful elimination of plaintiff's position was proposed, endorsed and approved of by the final policymakers of the County, including the County Executive and the County Legislature.
62. Given a history of politically-motivated hiring and firing in the County, the defendants' failure to properly train their staff was a substantial factor in the elimination of plaintiff's position.

71. The defendants' actions violated the Plaintiff's clearly established right to freedom of political association as guaranteed by the First and Fourteenth Amendments to the United States Constitution.
72. The Defendants knew, or reasonably should have known, that their conduct violated the Plaintiff's clearly established constitutional right to freedom of political association.
73. The Defendants acted with intent to violate, or with deliberate or reckless indifference to, the Plaintiff's clearly established First and Fourteenth Amendment rights.
74. At all times relevant herein, the Defendants were acting under color of state law.
75. As a direct result of the Defendants' conduct, the Plaintiff has suffered actual damages, attorneys' fees, and costs.

**THIRD CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO  
POLITICAL AFFILIATION, SPEECH AND ASSOCIATION—FIRST AND  
FOURTEENTH AMENDMENTS, U.S. CONSTITUTION—FAILURE TO TRAIN—  
AGAINST CHRIS COLLINS AND THE COUNTY OF ERIE**

76. With respect to the first two causes of action, the defendants COUNTY OF ERIE and CHRIS COLLINS were deliberately indifferent to the rights of the plaintiff by their failure to properly train their staff in the constitutional restrictions on terminating employees.
77. Said failure to train was a substantial factor in the unlawful elimination of plaintiff's position.
78. The Defendants or their policymakers knew, or reasonably should have known, that their conduct violated the Plaintiff's clearly established constitutional right to freedom of political association.

**FIFTH CAUSE OF ACTION—MUNICIPAL LIABILITY**

88. The termination of plaintiff's position was proposed, supported and endorsed by all the final policymakers in the County including the County Executive and the Legislature.
89. Thus, municipal liability may be imposed in this instance.
90. As a direct result of the Defendant's conduct, the Plaintiff has suffered actual damages, attorneys' fees, and costs.

**VI. DAMAGES**

91. On account of the Defendants' actions and violations of their rights as set forth above, the Plaintiff has suffered actual damages, including loss of income, loss of employment benefits, pain, suffering and emotional distress, and has incurred attorneys' fees and costs.
92. Plaintiff is entitled to recover his damages, attorney's fees, costs, and punitive damages against the individual defendants.
93. Plaintiff demands prejudgment interest on all elements of out-of-pocket loss.

**VII. PRAYER FOR RELIEF**

WHEREFORE Plaintiff requests that this Court:

- A. Assume jurisdiction of this action;
- B. Declare that Defendants' actions violated the Constitution and Laws of the United States;
- C. Enter judgment against the Defendants and in favor of the Plaintiff;
- D. Enter an injunction restoring GREGORY OLMA to his former position at the COUNTY OF ERIE;
- E. Award the Plaintiff compensatory damages of \$500,000, including prejudgment interest;

PO1# 18286



**County of Erie**  
Chris Collins  
County Executive

**GREGORY W. SKIBITSKY**  
Commissioner

**DEPARTMENT OF EMERGENCY SERVICES**

45 Elm Street – Buffalo, NY 14203  
716 858-6578 – FAX 858-7937  
www.erie.gov

February 15, 2008

Gregory B. Olma  
615 Fillmore Avenue  
Buffalo, New York 14212

Dear Mr. Olma,

As a result of a lack of funding for your position and action by the Erie County Legislature, your position has been eliminated. Therefore, pursuant to your Collective Bargaining Agreement, your employment with Erie County will be terminated on February 27, 2008.

Thank you for your service to the residents of Erie County.

Sincerely,

Gregory Skibitsky  
Commissioner of Emergency Services

**Exhibit "A"**



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

NORMAN MOORHOUSE,

Complainant,

v.

ERIE COUNTY, DEPARTMENT OF ENVIRONMENT  
AND PLANNING, DIVISION OF SEWERAGE  
MANAGEMENT,

Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.  
**10173320**

Federal Charge No. 16GB501402

I, Norman Moorhouse, residing at 1128 Sheree Dr., Grand Island, NY, 14072, charge the above named respondent, whose address is 95 Franklin St., 10th Floor, Buffalo, NY, 14202 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of disability, opposed discrimination/retaliation.

Date most recent or continuing discrimination took place is 1/5/2015.

See attached complaint.

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### New York State Division of Human Rights Complaint Form

#### CONTACT INFORMATION

My contact information:

Name: Norman Moorhouse

Address: 1128 Sheree Drive Apt or Floor #: \_\_\_\_\_

City: Grand Island State: NY Zip: 14072

#### REGULATED AREAS

I believe I was discriminated against in the area of:

- Employment
- Education
- Volunteer firefighting
- Apprenticeship Training
- Boycotting/Blacklisting
- Credit
- Public Accommodations  
*(Restaurants, stores, hotels, movie theaters amusement parks, etc.)*
- Housing
- Labor Union, Employment Agencies
- Commercial Space

I am filing a complaint against:

Company or Other Name: Erie Cty., Dept. of Env. + Planning, Div. of Sewerage Mgmt.

Address: 95 Franklin Street, 10th Floor

City: Buffalo State: NY Zip: 14202

Telephone Number: 716 858 8383  
(area code)

Individual people who discriminated against me:

Name: Charles Katra Name: See attached narrative  
 Title: Asst. Dept. Commissioner Title: \_\_\_\_\_

#### DATE OF DISCRIMINATION

The most recent act of discrimination happened on: 1 5 2015  
month day year

**BASIS OF DISCRIMINATION**

Please tell us why you were discriminated against by checking one or more of the boxes below.



You do not need to provide information for every type of discrimination on this list. Before you check a box, make sure you are checking it only if you believe it was a reason for the discrimination. Please look at the list on Page 1 for an explanation of each type of discrimination.

**Please note:** Some types of discrimination on this list do not apply to all of the regulated areas listed on Page 3. (For example, Conviction Record applies only to Employment and Credit complaints, and Familial Status is a basis only in Housing and Credit complaints). These exceptions are listed next to the types of discrimination below.

**I believe I was discriminated against because of my:**

<input type="checkbox"/> <b>Age</b> <i>(Does not apply to Public Accommodations)</i> Date of Birth:	<input type="checkbox"/> <b>Genetic Predisposition</b> <i>(Employment only)</i> Please specify:
<input type="checkbox"/> <b>Arrest Record</b> <i>(Only for Employment, Licensing, and Credit)</i> Please specify:	<input type="checkbox"/> <b>Marital Status</b> Please specify:
<input type="checkbox"/> <b>Conviction Record</b> <i>(Employment and Credit only)</i> Please specify:	<input type="checkbox"/> <b>Military Status:</b> Please specify:
<input type="checkbox"/> <b>Creed / Religion</b> Please specify:	<input type="checkbox"/> <b>National Origin</b> Please specify:
<input checked="" type="checkbox"/> <b>Disability</b> Please specify:  ADAAA, FMLA	<input type="checkbox"/> <b>Race/Color or Ethnicity</b> Please specify:
<input type="checkbox"/> <b>Domestic Violence Victim Status:</b> <i>(Employment only)</i> Please specify:	<input type="checkbox"/> <b>Sex</b> Please specify: <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male <input type="checkbox"/> Pregnancy <input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> <b>Familial Status</b> <i>(Housing and Credit only)</i> Please specify:	<input type="checkbox"/> <b>Sexual Orientation</b> Please specify:
<input checked="" type="checkbox"/> <b>Retaliation</b> <i>(if you filed a discrimination case before, or helped someone else with a discrimination case, or reported discrimination due to race, sex, or any other category listed above)</i> Please specify: Previously filed EEOC complaints based on ADAAA, union grievances.	



Before you turn to the next page, please check this list to make sure that you provided information **only** for the type of discrimination that relates to your complaint.



## EMPLOYMENT DISCRIMINATION

*Please answer the questions on this page only if you were discriminated against in the area of employment. If not, turn to the next page.*

**How many employees does this company have?**

- a) 1-3      b) 4-14      c) 15 or more      d) 20 or more      e) Don't know

**Are you currently working for the company?**

**Yes**

Date of hire: ( 5      15      1989 )      What is your job title? Sewer Maint. Worker  
Month      day      year

**No**

Last day of work: ( \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_ )      What was your job title? \_\_\_\_\_  
Month      day      year

**I was not hired by the company**

Date of application: ( \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_ )  
Month      day      year

### ***ACTS OF DISCRIMINATION***

**What did the person/company you are complaining against do? Please check all that apply.**

- Refused to hire me
- Fired me / laid me off
- Did not call me back after a lay-off
- Demoted me
- Suspended me
- Sexually harassed me
- Harassed or intimidated me (other than sexual harassment)
- Denied me training
- Denied me a promotion or pay raise
- Denied me leave time or other benefits
- Paid me a lower salary than other workers in my same title
- Gave me different or worse job duties than other workers in my same title
- Denied me an accommodation for my disability
- Denied me an accommodation for my religious practices
- Gave me a disciplinary notice or negative performance evaluation
- Other: \_\_\_\_\_

**DESCRIPTION OF DISCRIMINATION - for all complaints (Public Accommodation, Employment, Education, Housing, and all other regulated areas listed on Page 3)**

**Please tell us more about each act of discrimination that you provided information about on Pages 3 and 4. Please include dates, names of people involved, and explain why you think it was discriminatory. PLEASE TYPE OR PRINT CLEARLY.**

Please see attached narrative.

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**If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. PLEASE DO NOT WRITE ON THE BACK OF THIS FORM.**

1. I am a Caucasian male with a date of birth of July 19, 1969.
2. I reside in the State of New York and am a citizen of the same.
3. Respondent is the Erie County Division of Sewerage Management, a division of Erie County's Department of Environment and Planning, and is a sub-entity of Erie County. The Department of Environment and Planning is located at 95 Franklin Street, 10<sup>th</sup> Floor, Buffalo, New York 14202.
4. I was hired by the respondent on May 15, 1989. My most recent position with the respondent is that of Sewer Maintenance Worker.
5. My compensation consists of a base salary of USD 49,000 annually, with occasional overtime. Additionally, I am compensated in terms of benefits which include health insurance, retirement, and paid vacation.
6. My job responsibilities include responding to issues related to the function of the sewers within Erie County. This often entails using a work truck to drive to a work-site, and making repairs there with the assistance of other employees of the respondent.
7. Initially, respondent gave me occasional, positive feedback regarding my work product. I had few, if any, disciplinary actions taken against me.
8. In October of 2007 I was injured on duty when a hose coupling failed, detached, and struck me.
9. This injury formed the basis for my classification as disabled under the law.
10. This injury required surgery to correct. As a result of this injury I was duly awarded with worker's compensation, and additionally filed a third-party lawsuit.
11. Despite the requirement for surgery to heal my injury, I worked until I had the surgery.
12. I had the required surgery, and remained out of work until I healed from the surgery. This meant that I was out of work for approximately six months after the surgery.
13. In March 2009 and after the surgery, I attempted to return to work.
14. Accordingly, I requested light duty as a reasonable accommodation.
15. On May 4, 2009, respondent denied my request for light duty as a reasonable accommodation.

16. On May 11, 2009 and subsequent to this denial, I filed a complaint with the Equal Employment Opportunity Commission (EEOC) regarding allegations of disability discrimination. This matter went to mediation, where the respondent and I agreed to settlement terms on June 26, 2009.
17. In July 2009, respondent posted an opening for the position of Sewer Inspector. I was qualified for this position, which would have been a promotional opportunity for me. Although I applied for this position, I was not chosen for this position.
18. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.
19. In September of 2009, respondent posted an opening for the position of Senior Sewerage Facilities Mechanic. I was qualified for this position, which would have been a promotional opportunity for me. Although I applied for this position, I was not chosen for this position.
20. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.
21. On October 19, 2009, respondent posted an opening for the position of Sewer Repair Supervisor. I was qualified for this position, which would have been a promotional opportunity for me.
22. On October 30, 2009, respondent notified me that I was not selected for the position of Sewer Repair Supervisor. At a later date, I am informed by the respondent that it appointed Karl Milletello pursuant to Civil Service Law 65.1.
23. Upon information and belief, Milletello was not qualified for this position by reason of his failure to take the required civil service exam.
24. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.
25. On December of 2009 I filed a complaint with the EEOC alleging disability discrimination and retaliation for filing my previous EEOC complaint.
26. In October of 2010 the respondent and I agreed to settlement terms.
27. In late 2011, respondent posted an opening for the position of Safety Manager. I was qualified for this position, which would have been a promotional opportunity for me. Although I applied for this position, I was not chosen for this position.
28. In fact, respondent hired Jim Lavell for this position.

29. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.

30. On May 28, 2013 respondent posted a notice of mandatory training for its employees.

31. I was scheduled for training on 6/13/13. This date conflicted with a doctor's appointment I had previously scheduled.

32. I spoke with my supervisor, Roger Lalli regarding the time conflict. I asked for the training date to be rescheduled, to which Lalli agreed to do.

33. Subsequently, I saw that the notice of mandatory training had been modified. I also saw, however, that where my training date was moved had been scratched out, and my name was back to the original training date.

34. This reestablished my time conflict between this training date and my doctor's appointment.

35. I spoke again to Lalli about the time conflict, and specifically asked why my request was granted, and then denied. Lalli informed me that Assistant Deputy Commissioner Charles Katra was "waiting for [me] to pull the 'FMLA card' and was not going to switch [me] out."

36. I was further informed that Katra stated if I didn't attend the training I would have to make it up on my own time, I will have to pay for it, and I would be subject to discipline.

37. I responded to Lalli that this was a violation of the FMLA. Despite this violation, I rescheduled my doctor's appointment to accommodate the training date, and attended the training.

38. In June of 2013, and as a result of this violation of my FMLA rights, I contacted the Erie County Office of Equal Employment Opportunity and complained.

39. On December 12, 2013 I was called into a preliminary investigative meeting regarding allegations of misconduct. At this meeting were Larry Kreug, an employee of the respondent, and Katra.

40. The allegations involved a GPS unit on respondent's vehicle that I used. Kreug and Katra stated that, according to the GPS unit, I was slow to complete my job duties, and left the vehicle standing for some time.

41. I denied these allegations and made specific, factual allegations to demonstrate my points.

42. In January of 2014, Lavell left his position as Safety Manager, creating a vacancy.

43. On January 29, 2014, respondent posts the vacant position for Safety Manger.
44. On the same date I confirmed with respondent's personnel department that I was still on the list for the position, and was -in fact- first in line for this position. Although I should not have to, I reapplied for this position.
45. I remained qualified for this position.
46. On January 31, 2014, I was notified that I was required to attend a meeting for discipline regarding the prior preliminary investigative meeting that was previously held.
47. On February 3, 2014, I attended the disciplinary meeting. Katra and Lalli attended this meeting and stated that I was given a written warning regarding the allegations of misconduct.
48. This warning goes into my personnel file and threatened that the next violation would result in my termination.
49. Upon information and belief, two other employees present during this alleged misconduct received only verbal warnings. I was singled out for punishment by respondent.
50. This punishment was retaliatory in nature, or a form of disability discrimination. Moreover, upon information and belief, this discipline was imposed specifically to prevent my promotion to any other position.
51. On February 7, 2014 I grieved the discipline I received on February 3, 2014. Subsequently, Katra summarily denies my grievance.
52. In March of 2014 I inquired about the availability of a transfer to other positions. I was told that I was on the transfer list, and would be transferred automatically based upon my seniority.
53. During the summer of 2014, I was working on a site with Richard Rehac, the respondent's Sewer District Manager.
54. I told Rehac of my hopes of promotion to the Safety Manager position to which Rehac responded: "You will never get promoted. They hate you because you file all kinds of charges against them. They would love to fire you."
55. I understood "they" to mean Glenn Absalom, respondent's Sewer Chief, Joe Fiegel, respondent's Deputy Commissioner, Katra, and Kreug.
56. This statement by Rehac was *prima facie* evidence of the discriminatory and or retaliatory animus of the respondent.

57. In July of 2014 I asked Katra if I would receive an interview for the Safety Manager position.

58. Katra responded that respondent had interviewed all candidates for the position who were eligible and whose qualifications best matched the needs of the division.

59. Upon information and belief, I was qualified and could meet the needs of the position.

60. This was the first I knew that I was not selected for the position of Safety Manager. Upon information and belief, this position was given to Samantha Mascia.

61. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.

62. In September of 2014 I received a notice of a vacancy in the Sewer Repair Supervisor position. I was qualified for this position, which would have been a promotional opportunity for me. Although I applied for this position, I was not chosen for this position.

63. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.

64. On October 8, 2014 I received orders from my supervisor, Tommy Herr, to report to a site and inspect a sanitary sewer. In order to fulfill my duty, I drove off the road and by doing so, created tracks in the earth with the respondent's vehicle.

65. On that same date, I subsequently was relieved by a separate crew. Upon information and belief, this crew also created tracks in the earth to fulfill their duty.

66. Subsequently, I was required to attend a meeting with Herr and Rehac. Rehac asked me to explain what I did on October 8, 2014 without giving me notice of any charges.

67. When I was done explaining what I had done on October 8, 2014, Rehac gave me a prepared memo of counseling.

68. I disputed the appropriateness of disciplining me for anything I was alleged to have done on that date, and denied that I committed any misconduct.

69. This discipline was initiated by respondent for discriminatory and/or retaliatory purposes.

70. Subsequently, I was called into another meeting by respondent. At this meeting, Katra and Rehac told me that I failed to mention that I had created tracks in the earth.

71. Upon information and belief, there is no policy to report making tracks, or ruts, in the earth.

72. Despite this, respondent notified me that I would be suspended. My union representative disputed this additional discipline especially in light of the previous memo of counseling I had received for the events of the same date.
73. On October 28, 2014 I received notice that I was suspended for five (5) days.
74. This discipline was initiated by respondent for discriminatory and/or retaliatory purposes.
75. I grieved this issue on the same date that I received notice of my suspension.
76. Also on October 28, 2014 I injured my back. I filed a worker's compensation claim which was investigated by Timothy Gannon.
77. Eventually, my claim for worker's compensation was denied based upon the false investigation by Gannon.
78. This bogus investigation was motivated by respondent's discriminatory and/or retaliatory animus.
79. At some point in late 2014 I applied for a transfer to a position in the Highway Department on Harlem Road.
80. On November 5, 2014 I inquired as to the status of that transfer to the respondent's personnel department.
81. On November 17, 2014 Katra emails me and several other employees of respondent a denial of my grievance.
82. On this same date, respondent's personnel office informed me that I could not be transferred because there were disciplines on my personnel record that were still open.
83. Subsequently, I made a specific request for FMLA leave. Previously, I had been on intermittent FMLA leave during this year.
84. On November 25, 2014, Rehac calls me into his office. Rehac asks me what the FMLA leave was for. Upon hearing my answer, Rehac states that he didn't like my explanation for my FMLA leave and that it "sounds like bullshit."
85. This statement by Rehac was intended to dissuade me from using my right to FMLA leave.
86. In late 2014, I became aware of a vacancy for the Supervising Maintenance Mechanic at the Rath Building. I was qualified for this position, which would have been a promotional opportunity for me.



87. In January of 2015 I spoke with an employee regarding a position that I had applied for as a Supervising Maintenance Mechanic. This person informed me that he wasn't aware if they hired someone, but knew that the respondent was still looking to fill the position.

88. This employee stated that he knew that because my name had come up. When my name was mentioned in consideration of this position, Michael Ingelfinger, a supervisor for the respondent, stated that they 'would not hire me because of all the complaints I had filed, and that they did not need that downtown.'

89. Upon information and belief, this position was filled by Andrew Park.

90. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.

91. In the early 2015, respondent posted a vacancy for the position of Sewer Repair Supervisor. I was eligible for this position and should be considered for it automatically, as I had previously taken the appropriate civil service exam for the position.

92. On January 5, 2015, respondent posted a notice that Todd Hicks had filled the Sewer Repair Supervisor. Upon information and belief, Hicks had not taken the civil service exam for the position, and was therefore, unqualified.

93. Respondent's failure to hire me was retaliatory in nature, and/or a form of disability discrimination.

**NOTARIZATION OF THE COMPLAINT**

Based on the information contained in this form, I charge the above-named Respondent with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment), or filing my housing/credit complaint with HUD under Title VIII of the Federal Fair Housing Act, as amended (covers acts of discrimination in housing), as applicable. This complaint will protect your rights under Federal Law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law and/or to accept this complaint on behalf of the U.S. Department of Housing and Urban Development for review and additional filing by them, subject to the statutory limitations contained in the aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

*Norm Macchione*  
Sign your full legal name

Subscribed and sworn before me  
This 7th day of June, 2015

*Will H.*  
Signature of Notary Public

County: Eric

Commission expires: 5/16/2017  
02 HA 6206409

**Please note: Once this form is notarized and returned to the Division, it becomes a legal document and an official complaint with the Division of Human rights. After the Division accepts your complaint, this form will be sent to the company or person(s) whom you are accusing of discrimination.**

**Respondent Contact Information**

Return to:  
NYS Division of Human Rights  
Buffalo Regional Office  
65 Court Street, Suite 506  
Buffalo, New York 14202

Re: Norman Moorhouse v. Erie County, Department of Environment and Planning, Division of  
Sewerage Management  
SDHR NO: 10173320

Correct legal name of Respondent: \_\_\_\_\_  
\_\_\_\_\_

Federal Employer Identification Number (FEIN): \_\_\_\_\_

Contact person for this complaint:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_ Telephone No: (\_\_\_\_) \_\_\_\_\_

E-mail address: \_\_\_\_\_

Is the firm a publicly traded corporation, privately owned, or a d/b/a? If yes, please indicate:

\_\_\_ Publicly traded corporation \_\_\_ Privately owned corporation \_\_\_ d/b/a

If privately owned or d/b/a, list names and addresses of all individuals who have an ownership interest in the Respondent (attach additional sheets if necessary)

\_\_\_\_\_  
\_\_\_\_\_

Do you have an attorney for this matter: Yes \_\_\_ No \_\_\_ If yes:

Attorney Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_ Telephone No: (\_\_\_\_) \_\_\_\_\_

Will you participate in settlement/conciliation? Yes \_\_\_ No \_\_\_ If yes, for this purpose please contact:

Name: \_\_\_\_\_ Telephone No: (\_\_\_\_) \_\_\_\_\_

(Settlement discussions will not delay the investigation and participation in settlement does not provide good cause for an extension of time to respond to the complaint.)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



NEW YORK STATE  
**DIVISION OF HUMAN RIGHTS**  
WALTER J. MAHONEY STATE OFFICE BUILDING  
65 COURT STREET, SUITE 506  
BUFFALO, NEW YORK 14202

(716) 847-7632  
Fax: (716) 847-7625  
www.dhr.ny.gov

**ANDREW M. CUOMO**  
GOVERNOR

**HELEN DIANE FOSTER**  
COMMISSIONER

**INFORMATION FOR RESPONDENTS**  
**CONCERNING COMPLAINT PROCEDURES OF**  
**NEW YORK STATE DIVISION OF HUMAN RIGHTS**

The New York State Division of Human Rights is a State agency mandated to receive, investigate and resolve complaints of discrimination under N.Y. Executive Law, Article 15 ("Human Rights Law"). The Division's role is to fairly and thoroughly investigate the allegations in light of all evidence gathered.

**WHAT TYPES OF COMPLAINTS ARE HANDLED BY THE DIVISION OF HUMAN RIGHTS?**

The Human Rights Law forbids discrimination in employment, apprenticeship and training, purchase and rental of housing and commercial space, places of public accommodation, certain educational institutions, and credit transactions. If a person feels that he or she has been discriminated against by of reason of race, color, creed, sex, age (not public accommodation), disability, national origin, marital status, familial status (housing only), conviction or arrest record (employment only), genetic predisposition (employment only), military status, or sexual orientation, or because he or she has opposed any practices forbidden under the Human Rights Law, that person may file a complaint with the State Division of Human Rights.

**HOW DOES A PERSON FILE A COMPLAINT?**

Persons wishing to file a complaint of discrimination may contact the nearest regional office of the Division of Human Rights. The Human Rights Law requires that they must file such a complaint within one year of the alleged unlawful discriminatory act.

**WHAT IS THE INVESTIGATIVE PROCEDURE?**

The Division represents neither the Complainant nor the Respondent. The Division pursues the State's interest in the proper resolution of the matter in accordance with the Human Rights Law. Complainant and Respondent can retain private counsel to represent them during the investigation, but such representation is not required.

Upon receipt of a complaint, the regional office will:

- Notify the Respondent(s). (A Respondent is a person or entity about whose action the Complainant complains. An employer must have four or more employees for the Human Rights Law to apply.)
- Resolve issues of questionable jurisdiction.

INFORMATION FOR RESPONDENTS  
CONCERNING COMPLAINT PROCEDURES OF THE NYS DIVISION OF HUMAN RIGHTS  
Page 2

- Forward a copy of the complaint to the U.S. Equal Employment Opportunity Commission (EEOC) or the U.S. Department of Housing and Urban Development (HUD), where applicable. Such federal filing creates a complaint separate and apart from the complaint filed with the Division, although in most cases only one investigation is conducted pursuant to work-sharing agreements with these federal agencies.
- Investigate the complaint through appropriate methods (written inquiry, field investigation, witness interviews, requests for documents, investigatory conference, etc.), in the discretion of the Regional Director. The investigation of the complaint is to be objective.
- Allow the parties to settle the matter by reaching agreement on terms acceptable to the Complainant, Respondent and the Division. The Division will allow settlement from the time of filing until the matter reaches a final resolution.
- Determine whether or not there is probable cause to believe that an act of discrimination has occurred, if the matter cannot be settled prior to that Determination. The Division will notify the Complainant and Respondent in writing of the Determination.

You, or your attorney, may review the Division's file in this matter, and may copy by hand any material in the file, or obtain photocopies at a nominal charge. The Complainant in this matter has the same right to review the file.

**WHAT IS THE DIVISION'S POLICY ON ADJOURNMENTS AND EXTENSIONS?**

It is the Division's policy to investigate all cases promptly and expeditiously. Therefore, you are expected to cooperate with the investigation fully and promptly. No deadlines will be extended at any time during the investigation, unless good cause is shown in a written application submitted at least five (5) calendar days prior to the original deadline. Failure to comply could result in an adverse finding against you, which would be shared with, among others, the Secretary of State and the applicable State licensing agencies that govern your business.

**WHAT IS THE PROCEDURE FOLLOWING THE INVESTIGATION?**

If there is a Determination of no probable cause, lack of jurisdiction, or any other type of dismissal of the case, the Complainant may appeal to the State Supreme Court within 60 days.

If the Determination is one of probable cause, there is no appeal to court. The case then proceeds to public hearing before an Administrative Law Judge. Under Rule 465.20 (9 N.Y.C.R.R. § 465.20), the Respondent may ask the Commissioner of Human Rights within 60 days of the finding of probable cause to review the finding of probable cause. Such application should be sent to the General Counsel of the Division and to the Complainant, and Complainant's attorney, if any.

**WHAT IS A PUBLIC HEARING?**

A public hearing, pursuant to the Human Rights Law, is a trial-like proceeding at which relevant evidence is placed in the hearing record. It is a hearing de novo, which means that the Commissioner's final decision on the case is based solely on the content of the hearing record. The public hearing is presided over by an Administrative Law Judge, and a verbatim transcript is made of the proceedings.

The hearing may last one or more days, not always consecutive. Parties are notified of all hearing sessions in advance, and the case may be adjourned to a later date only for good cause.

INFORMATION FOR RESPONDENTS  
CONCERNING COMPLAINT PROCEDURES OF THE NYS DIVISION OF HUMAN RIGHTS  
Page 3

Respondent can retain private counsel for the hearing, and, if Respondent is a corporation, is required to be represented by legal counsel. The Complainant can retain private counsel for the hearing, but is not required to do so. If Complainant is not represented by private counsel, the Division's counsel prosecutes the case in support of the complaint. Attorneys for the parties or for the Division may issue subpoenas for documents and to compel the presence of witnesses.

At the conclusion of the hearing sessions, a proposed Order is prepared by the Administrative Law Judge and is sent to the parties for comment.

A final Order is issued by the Commissioner. The Commissioner either dismisses the complaint or finds discrimination. If discrimination is found, Respondent will be ordered to cease and desist and take appropriate action, such as reinstatement, training of staff, or provision of reasonable accommodation of disability. The Division may award money damages to Complainant, including back pay and compensatory damages for mental pain and suffering, and in the case of housing discrimination, punitive damages, attorney's fees and civil fines and penalties. A Commissioner's Order may be appealed by either party to the State Supreme Court within 60 days. Orders after hearing are transferred by the lower court to the Appellate Division for review.

#### **WHAT IS A COMPLIANCE INVESTIGATION?**

The compliance investigation unit verifies whether the Respondent has complied with the provisions of the Commissioner's Order. If the Respondent has not complied, enforcement proceedings in court may be brought by the Division.

#### **NOTICE PURSUANT TO PERSONAL PRIVACY PROTECTION LAW**

Pursuant to the Human Rights Law, the Division collects certain personal information from individuals filing complaints and from those against whom a complaint has been filed. The information is necessary to conduct a proper investigation; failure to provide such information could impair the Division's ability to properly investigate the matter. This information is maintained in a computerized Case Management System maintained by the Division's Director of Information Technology, who is located at One Fordham Plaza, Bronx, New York, (718) 741-8365.

#### **PENAL PROVISION OF THE HUMAN RIGHTS LAW**

The Human Rights Law contains the following penal provision:

"Any person, employer, labor organization or employment agency, who or which shall willfully resist, prevent, impede or interfere with the division or any of its employees or representatives in the performance of duty under this article, or shall willfully violate an order of the division or commissioner, shall be guilty of a misdemeanor and be punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both; but procedure for the review of the order shall not be deemed to be such willful conduct." Human Rights Law § 299.

#### **GENERAL INFORMATION**

For a more detailed explanation of the process, see the Division's Rules of Practice (9 N.Y.C.R.R. § 465) available on our website [www.dhr.ny.gov](http://www.dhr.ny.gov). If you have any additional questions about the process, the investigator assigned to the case will be available to answer most questions.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
New York District Office  
33 Whitehall Street, 5th Floor  
New York, New York 10004-2112

TO:  
Erie County, Department of Environment and  
Planning, Division of Sewerage Management  
Attn: Commissioner  
95 Franklin St., 10th Floor  
Buffalo, NY 14202

PERSON FILING CHARGE:  
Norman Moorhouse  
THIS PERSON (Check one):  
Claims to be aggrieved [x]  
Files on behalf of other(s) [ ]  
DATE OF ALLEGED VIOLATION:  
1/5/2015  
PLACE OF ALLEGED VIOLATION:  
Erie County  
EEOC CHARGE NUMBER:  
16GB501402  
FEPA CHARGE NUMBER:  
10173320

NOTICE OF CHARGE OF DISCRIMINATION WHERE AN FEP AGENCY WILL INITIALLY PROCESS

YOU ARE HEREBY NOTIFIED THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER

- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act of 1967 (ADEA)
- The Americans with Disabilities Act (ADA)

HAS BEEN RECEIVED BY: The New York State Division of Human Rights (FEP Agency) and sent to the EEOC for dual filing purposes.

While the EEOC has jurisdiction (upon expiration of any deferral requirements if this is a Title VII or ADA charge) to investigate this charge, EEOC may refrain from beginning an investigation and await the issuance of the FEP Agency's final findings and orders. These final findings and orders will be given weight by EEOC in making its own determination as to whether or not reasonable cause exists to believe that the allegations made in the charge are true.

You are therefore encouraged to cooperate fully with the FEP Agency. All facts and evidence provided by you to the Agency in the course of its proceedings will be considered by the Commission when it reviews the Agency's final findings and orders. In many instances the Commission will take no further action, thereby avoiding the necessity of an investigation by both the FEP Agency and the Commission. This likelihood is increased by your active cooperation with the Agency.

As a party to the charge, you may request that EEOC review the final decision and order of the above named FEP Agency. For such a request to be honored, you must notify the Commission in writing within 15 days of your receipt of the Agency's issuing a final finding and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by the Commission.

For further correspondence on this matter, please use the charge number(s) shown.

An Equal Pay Act investigation (29 U.S.C. §206(d)) will be conducted by the Commission concurrently with the FEP Agency's investigation of the charge.

Enclosure: Copy of the Charge

BASIS FOR DISCRIMINATION: Disability, Opposed Discrimination/Retaliation

CIRCUMSTANCES OF ALLEGED VIOLATION:  
SEE ATTACHED N.Y.S. DIVISION OF HUMAN RIGHTS COMPLAINT

DATE: February 3, 2015

TYPED NAME OF AUTHORIZED EEOC OFFICIAL:  
Kevin J. Berry

SUPREME COURT OF NEW YORK  
COUNTY OF ERIE

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In the matter of the Claim of

LINDA HANLEY  
2175 North French Road- Apt 1  
Getzville, NY 14068

Claimant

This paper received at the  
Erie County Attorney's Office  
from Terrance Brennan on  
the 10<sup>th</sup> day of March, 2015  
at 2:00 a.m./p.m.  
Terrance Brennan  
Assistant County Attorney

NOTICE OF CLAIM

Vs.

THE COUNTY OF ERIE and  
BOARD OF TRUSTEES ERIE COMMUNITY COLLEGE and  
ERIE COMMUNITY COLLEGE,  
Respondents

---

TO : THE COUNTY OF ERIE and  
BOARD OF TYRUSTEES ERIE COMMUNITY COLLEGE and  
ERIE COMMUNITY COLLEGE, Respondents.

PLEASE TAKE NOTICE that LINDA HANLEY has a claim and hereby makes claim against THE COUNTY OF ERIE and THE BOARD OF TRUSTEES OF ERIE COMMUNITY COLLEGE and ERIE COMMUNITY COLLEGE for Harassment, Negligence, Breach of Contract, Defamation, and damages (personal, emotional and property and otherwise) generally sustained by her and in support thereof the claimant states:

1. The post office address of the claimant is  
2175 North French Road- Apt 1  
Getzville, NY 14068
2. The name and address of the attorney for the claimant is TERRANCE C. BRENNAN, 329 Elmwood Avenue, Buffalo, NY 14222.
3. The Claim herein is for injuries and damages to person and property as hereinafter set forth as well as for violation of civil rights, state and/or federal, if applicable.
4. The time when the claim arose and the time when injuries and damages hereinafter were sustained was approximately December December 15, 2014 at approximately 1 pm and thereafter. The particular



place where the claim arose and damages and injuries sustained was in the auditorium of the Erie Community College City Campus in Buffalo NY where, despite having contacted with respondents and paid respondents for education leading up to a degree in the nursing field and having successfully complete said requirements and being led to believe she was graduating and having the associated benefits and privileges therewith and Claimant having announced same to family and friends and inviting same to the nursing "pinning" ceremony and having plans, both celebratory and professional in consequence thereof, respondents, their agents and/or employees refused and barred Claimant from said "pinning" ceremony and the premises and withheld graduation without justification and/or legitimate basis, thereby embarrassing and humiliating Claimant, casting disparagement and taint over her image and reputation and interfering with Claimant's plans, both celebratory and professional, all to Claimant's damage and expense and pain and suffering.

5. At the time of the aforesaid occurrence, Claimant was a student and prospective graduate of the Respondents.

6. The incidents and damages and injuries resulting therefore were caused wholly and solely through the actions, and/or negligence and carelessness of THE COUNTY OF ERIE and THE BOARD OF TRUSTEES OF ERIE COMMUNITY COLLEGE and ERIE COMMUNITY COLLEGE, its agents, employees and representatives, who violated the contractual, personal and/or civil rights of the Claimant and engaged in conduct and who harassed, injured and damaged Claimant in her person and property and civil rights without justification, permission or color of law by refusing graduation participation to the Claimant.

7. Claimant solely by reason of the actions and/or negligence of said Respondents, their agents, employees and representatives sustained injuries, pain and suffering, humiliation, emotional distress and sustained damages in terms of reputation, expenses, lost income, and other benefits together with other damages available under law.

WHEREFORE Claimant requests and demands that his Claim be honored, paid and adjusted within the statutory time frame(s) required by law.

Dated: March 3, 2015

Yours, etc.



TERRANCE C. BRENNAN  
Attorney for Claimant  
329 Elmwood Avenue  
Buffalo, NY 14222  
(716) 773-3626

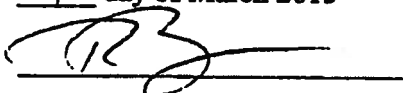
State of New York )  
                                  ) Ss.:  
County of Erie        )

LINDA HANLEY, being duly sworn deposes and says:

I am the CLAIMANT in the above action and have read the foregoing NOTICE OF CLAIM and swear the contents of same to be true to my own knowledge except those matter alleged upon information and belief, and as to those matters I believe them to be true.

  
Linda Hanley

Sworn to before me this  
4 day of March 2015



TERRANCE C. BRENNAN  
NOTARY PUBLIC STATE OF NEW YORK  
QUALIFIED TO EXPIRE 3/31/15  
MY COMMISSION EXPIRES 3/31/15

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

---

In the Matter of the Claim of  
PETER KOSCHUK  
80 Schlemmer Road  
Lancaster, New York 14086

Claimant,

v.

ERIE COUNTY SHERIFF'S OFFICE  
10 Delaware Avenue  
Buffalo, New York 14202

ERIE COUNTY  
95 Franklin Street  
16th Floor  
Buffalo, New York 14202

TIMOTHY B. HOWARD  
In his individual and official capacity as Sheriff  
For ERIE COUNTY SHERIFF'S OFFICE and  
ERIE COUNTY  
10 Delaware Avenue  
Buffalo, New York 14202

---

To: ERIE COUNTY SHERIFF'S OFFICE  
10 Delaware Avenue  
Buffalo, New York 14202

ERIE COUNTY  
95 Franklin Street  
16th Floor  
Buffalo, New York 14202

TIMOTHY B. HOWARD  
In his individual and official capacity as Sheriff  
For ERIE COUNTY SHERIFF'S OFFICE and  
ERIE COUNTY  
10 Delaware Avenue  
Buffalo, New York 14202

This paper received at the  
Erie County Attorney's Office  
from Brian G. ... on  
the 24 day of March 2015  
at 9:50 a.m./p.m.

Assistant County Attorney

NOTICE OF CLAIM

PLEASE TAKE NOTICE, that PETER KOSCHUK (“Claimant”) hereby makes a claim against the ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, and in support thereof the Claimant states the following upon information and belief:

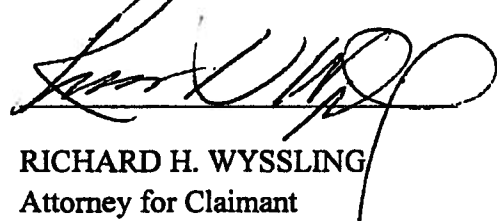
1. Claimant, PETER KOSCHUK, resides at 80 Schlemmer Road, Lancaster, New York 14086.
2. The name and address of the Claimant’s attorney is Richard H. Wyssling, 375 Linwood Avenue, Buffalo, NY 14209.
3. The occurrence of the incidents resulting in this claim arose on or about January 12, 2015 and January 13, 2015 at 10 Delaware Avenue, Buffalo, New York 14202.
4. The claim arose in the following manner: On January 12, 2015 Claimant’s employment as a Corrections Officer, Sheriff of Erie County, was terminated by the ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD. Claimant’s Notice of Termination, dated January 5, 2015, stated that the, “termination under your probationary period is based upon your unsatisfactory time and attendance record.”
5. That at all relevant times Claimant was not in a probationary period and therefore there was no basis for Claimant’s termination.
6. That on or about January 13, 2015, the ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD did communicate false and/or defamatory statements (“Statements”) to the New York State Police regarding, including but not limited to, Claimant’s termination, and upon information and belief the Statements were also communicated by ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD to others.

7. That the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD had prior knowledge that Claimant was seeking employment with the New York State Police.
8. That the Statements regarding the Claimant that were made by the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, to the New York State Police, were the only reason that Claimant was not hired by the New York State Police.
9. That as a result of the wrongful, malicious, and/or negligent actions of the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, the Claimant has been damaged.
10. That the totality of the Claimant's damages may not be fully ascertained at this time and include, but are not limited to, lost income, lost benefits, damage to Claimant's good name and reputation, and intentional infliction of emotional distress, by reason of acts and/or omissions of the ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY, and TIMOTHY B. HOWARD, its agents, servants, employees, and/or representatives, in the matter set forth herein.
11. PLEASE TAKE FURTHER NOTICE, that the Claimant respectfully requests that this claim be allowed and paid by the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD; and hereby notifies the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, that unless the claim set forth herein is adjusted and paid within thirty (30) days from the presentation of this claim, it is the Claimant's intention to commence an action against the ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY, and TIMOTHY B.

HOWARD, to recover for the damages sustained by the Claimant, together with the cost and disbursements of such action.

Dated: Buffalo, New York  
March 20, 2015

Yours, etc.,



RICHARD H. WYSSLING  
Attorney for Claimant  
375 Linwood Avenue  
Buffalo, New York 14209  
Phone: 716-882-2243  
Fax: 716-882-6113  
Richard@RichardWyssling.com

TO: ERIE COUNTY SHERIFF'S OFFICE  
10 Delaware Avenue  
Buffalo, New York 14202

ERIE COUNTY  
95 Franklin Street  
16th Floor  
Buffalo, New York 14202

TIMOTHY B. HOWARD  
In his individual and official capacity as Sheriff  
For ERIE COUNTY SHERIFF'S OFFICE and  
ERIE COUNTY

VERIFICATION

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

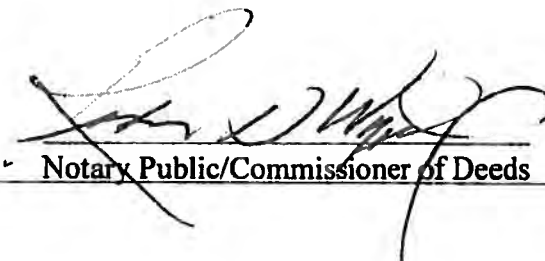
**PETER KOSCHUK** being duly sworn, deposes and says that he is the plaintiff in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

  
PETER KOSCHUK

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

On the 23<sup>RD</sup> day of MARCH, in the year 2015 before me, the undersigned, personally appeared PETER KOSCHUK, 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 they executed the same in his capacity and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

RICHARD H. WYSSLING  
Notary Public State of New York  
Qualified in Erie County  
#02WY4748413  
My Commission Expires Nov. 30, 2017

  
Notary Public/Commissioner of Deeds

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

In the Matter of the Claim of:

*Redacted for  
recipient privacy*

NOTICE OF CLAIM

Claimant,

-vs-

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

Respondent.

---

TO: COUNTY OF ERIE  
95 Franklin Street  
Buffalo, New York 14202

PLEASE TAKE NOTICE, that *Redacted* has a claim against the COUNTY OF ERIE, New York, its officers, agents and/or employees, for personal injuries, psychological and emotional injuries and damages suffered by her as a result of the tortious conduct of Respondent, its officers, agents and/or employees, beginning on or about January 29, 2015 and continuing thereafter as follows:

1. The post office address of claimant is *Redacted* New York 14150.
2. The name of the attorney for claimant is CHIACCHIA & FLEMING, LLP, Tiffany M. Kopacz, Esq., of counsel, post office address 5113 South Park Avenue, Hamburg, New York 14075, and telephone number (716) 648-3030.



3. Upon information and belief, beginning on or about December 8, 2014, claimant R was contacted by a Mr. Torres as investigator for Erie County Department of Social Services, Child Protective Services (CPS), purportedly to begin an investigation regarding the welfare of a child(ren) following a verbal argument that occurred between R and her fiancée Timothy Ciffa.

4. Upon information and belief, Mr. Torres initiated contact with R as a result of the aforementioned verbal argument. However, R was not notified in writing by CPS or Mr. Torres of an actual complaint having been made, the nature of any such allegations or even that she was the subject of a complaint.

5. Upon information and belief, a second CPS investigation was initiated against R stemming from an incident on December 31, 2014 between her and her daughter's father's fiance. Torres did contact her during the first week of January 2015 to discuss the incident, although he never told her that a formal investigation was triggered by this incident.

6. Upon information and belief, Mr. Torres then continued to contact R purportedly on behalf of Respondent as the assigned CPS caseworker through the end of January 2015.

7. On or about January 29, 2015, R met with Mr. Torres, at his request, at Tim Hortons in Grand Island, New York, because he claimed that he needed to discuss the case. During this January 29<sup>th</sup> meeting, Mr. Torres began to make a series of sexual advances,

inappropriately touched claimant R on her legs and kept making sexual innuendos during their conversation. He also suggested that she go away on vacation with him when the case was closed and also asked her to go to New York City with him for Valentine's Day to see a Marc Anthony concert. At that time, he mentioned to claimant R that he had been suspended four years ago for being accused of inappropriate relations in another case, implying that he was open to exploring a sexual relationship with R. Although R was disturbed and shaken from this interaction, she felt threatened and fearful because the CPS investigation appeared to be ongoing.

8. From January 29, 2015 until approximately mid-February 2015, Mr. Torres repeatedly made phone calls and sent texts to claimant R of a personal nature, not necessarily relating to any matters pertaining to the open CPS investigation. On several occasions, Torres asked R to come over for sex or to meet him to have a drink. All of Torres' advances were declined by R, albeit under the constant fear and threat of potentially negative consequences to her open CPS case.

9. On or about February 27, 2015, Mr. Torres insisted that claimant R meet him in the parking lot of the Airport Plaza Jewelers on Union Road in Cheektowaga, New York, once again under the guise of discussing the status of her open CPS case. At that time, he again tried kissing and touching her inappropriately. On this occasion, when she voiced her repeated objections, he immediately became nervous and told R to make sure that all of his text messages and phone calls were deleted from her phone. He also told her very sternly that if she wanted her case to be "closed out", she needed to make sure she deleted everything and not to tell anyone about their interactions.

10. Following the February 27<sup>th</sup> meeting, R had limited contact with Torres wherein he told her (at least half a dozen times) that her case would be closed out. However, to date, upon information and belief, the CPS investigation against her has not been closed out. R has not heard from Mr. Torres since.

11. In or about April of 2015, a new CPS worker visited R at her home, who apologized for what happened and indicated that they were trying to close the case. It was at this time that R was informed that Mr. Torres was pulled from the case and further, that a second CPS investigation was initiated as a result of the December 31, 2014 incident. The status of both cases is currently unknown to claimant.

12. The respondent's negligence, in particular, but not in limitation thereof, consisted of the following: failing to properly and adequately investigate case files and ensure they are processed and closed promptly; failing to take necessary actions and precautions to ensure an appropriate level of contact and safety for the subjects of investigations by caseworkers, including claimant. R ; failing to promptly respond to complaints of potential and actual inappropriate conduct; failing to properly train and supervise its employees appropriately in conducting case investigations, failing to implement and/or enforce appropriate policies, rules and regulations to prevent the very occurrence alleged; failing to employ appropriate and adequate staff to investigate open cases; negligently hiring and retaining inexperienced and/or improper staff personnel, particularly staff who have previously demonstrated inappropriate handling of cases or inappropriate (including sexual) contact with subjects of investigations on prior occasions; causing, creating and maintaining a dangerous situation and increased risk of harm to

individuals being investigated, such as *R* ; failing to have proper quality assurance processes; failing to properly supervise personnel and staff; failing to take such appropriate measures to avoid the very incident complained of, although having adequate opportunity to do so; failing to meet proper standards regarding caseloads, including number and proper handling; and otherwise acting in a negligent manner.


13. The tortious conduct of the Respondent, as stated aforesaid, in addition to negligence, also includes the intentional and/or negligent infliction of emotional distress.


14. As a result of the respondent COUNTY OF ERIE's tortious conduct, claimant *R* suffered personal, psychological and emotional injuries and damages.

15. By reason of the foregoing, damages have been sustained by claimant *R* *R* in an amount to be determined after trial and/or after further analysis of this claim. Claimant *R* also seeks punitive damages to the extent permissible by law.

16. This notice is made and served on behalf of claimant *R* in compliance with the provisions of Section 50-e of New York State General Municipal Law and such other laws and statutes as are in the case made and provided. Unless this claim is adjusted and paid within 30 days of its presentation, it is the intention of claimant *R* to commence action against respondent COUNTY OF ERIE.

Dated: April 27, 2015

  
\_\_\_\_\_, Claimant

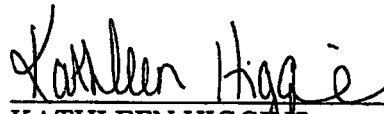
  
\_\_\_\_\_  
Tiffany M. Kopacz, Esq.  
CHIACCHIA & FLEMING, LLP  
Attorneys for Claimant  
5113 South Park Avenue  
Hamburg, New York 14075  
Telephone: (716) 648-3030

VERIFICATION

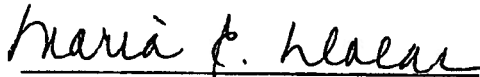
STATE OF NEW YORK )  
COUNTY OF ERIE ) ss.:

KATHLEEN HIGGINS, being duly sworn, deposes and says:

1. That deponent is the Claimant in the within action.
2. That deponent has read the foregoing Notice of Claim and knows the contents thereof.
3. That the same is true to deponent's own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes them to be true.

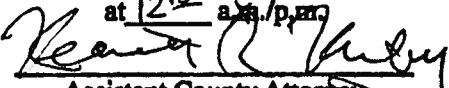
  
 \_\_\_\_\_  
 KATHLEEN HIGGINS

Sworn to before me this  
27<sup>th</sup> day of April, 2015.

  
 \_\_\_\_\_  
 Notary Public

MARIA E. DOLAN  
 Notary Public, State Of New York  
 Qualified In Erie County  
 My Commission Expires March 3, 2018

This paper received at the  
Erie County Attorney's Office  
from Dan Harwood  
the 11<sup>th</sup> day of June, 20    
at 12<sup>12</sup> a.m./p.m.

  
Assistant County Attorney

STATE OF NEW YORK  
SUPREME COURT : ERIE COUNTY

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In the Matter of  
GARY ZAWODZINSKI

**VERIFIED  
NOTICE OF CLAIM**

-against-

COUNTY OF ERIE,  
MARK POLONCARZ, ERIE COUNTY EXECUTIVE,  
and JOHN LOFFREDO, ERIE COUNTY DEPT. OF PUBLIC  
WORKS COMMISSIONER

---

TO: County of Erie  
Department of Law  
95 Franklin Street, Room 1634  
Buffalo, New York 14202

Mark Poloncarsz  
Erie County Executive's Office  
Edward A. Rath County Office Building  
95 Franklin Street, 16th Floor  
Buffalo, New York 14202

Erie County Department of Public Works  
Commissioner John Loffredo  
95 Franklin Street, 14<sup>th</sup> Floor  
Buffalo, New York 14202

PLEASE TAKE NOTICE, that GARY ZAWODZINSKI ("Mr. Zawodzinski") hereby makes claim and demand against the County of Erie, its County Executive, the County of Erie Public Works Department, Highway Division, and Commissioner John Loffredo (the "Respondents") for tortious acts,

violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages as follows:

1. The name and address of claimant and his attorney are:

Gary Zawodzinski  
55 Pamela Court  
West Seneca, New York 14224

Patricia Gillen, Esq.  
Duke, Holzman, Photiadis & Gresens LLP  
701 Seneca Street, Suite 750  
Buffalo, New York 14210

2. This is a claim against the Respondents for damages sustained by Mr. Zawodzinski arising from and relating to:

- (a) Respondents' wrongful termination of employment from the Erie County Department of Public Works Highway Department which was the culmination of Respondents' pattern of discrimination against Mr. Zawodzinski;

- (b) Respondents' discriminatory actions against Mr. Zawodzinski, due to his disability and veterans' status, which include failing to provide him a reasonable accommodation, personal attacks made against him as a result of his disability, differential treatment against him because of his disability, arising under both federal and state laws;



(c) Respondents' discriminatory actions against Mr. Zawodzinski due to his having exercised his rights under the collective bargaining agreement and the National Labor Relations Act;

(d) Respondents' failure to provide Mr. Zawodzinski with the protections of the Family and Medical Leave Act.

3. Mr. Zawodzinski has been damaged by the Respondents' tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, and wrongful termination. Respondents engaged in a pattern of harassment aimed at Mr. Zawodzinski due to his disability, made threats against him, made false allegations of criminal conduct against him defaming his reputation, forced him into a medical leave, and then denied him the protections under the Family and Medical Leave Act, and culminated in an unlawful and retaliatory termination despite the lack of any evidence against him.

4. The damages herein described were sustained as a result of the Respondents' tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages, which occurred during Mr. Zawodzinski's period of employment with the Erie County Department of Public Works and which have continued in

certain respects through the current period of time. Mr. Zawodzinski's claim accrued upon his wrongful termination date of March 13, 2015.

5. By reason of the aforesaid tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages, Mr. Zawodzinski has incurred damages in the form of lost wages, medical and pension benefits, emotional distress and anxiety. Mr. Zawodzinski may seek punitive damages against the Respondents based upon their intentional and malicious conduct.

6. Mr. Zawodzinski's damages set forth in paragraph 5, incurred by reason of the Respondents' wrongful conduct, are continuing to accrue, and will continue to accrue so long as Respondents continue their pattern of harassment and retaliatory actions against him. Accordingly, Mr. Zawodzinski reserves the right to amend this claim and the statement of damages as necessary to properly reflect the losses he has incurred as result of the Respondents' tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages.

WHEREFORE, GARY ZAWODZINSKI, hereby makes claim and demand against the Respondents, for damages, and all related costs and expenses, including attorneys' fees, together with appropriate interest.

Dated: June 10, 2015

**DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP**  
*Attorneys for Claimant, Gary Zawodzinski*

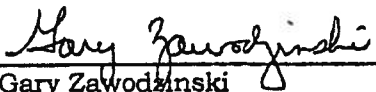
By 

Patricia Gillen  
701 Seneca Street, Suite 750  
Buffalo, New York 14210  
(716) 855-1111

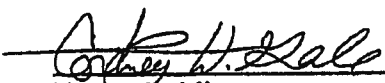
VERIFICATION OF NOTICE OF CLAIM

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

Gary Zawodzinski, being duly sworn, deposes and says that he is the claimant in the aforesaid Notice of Claim, he has read the foregoing Notice of Claim and knows the contents thereof; that the same are true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and to those matters he believes it to be true.

  
\_\_\_\_\_  
Gary Zawodzinski

Sworn to before me this  
16<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Notary Public

**CORTNEY W. GALE**  
Notary Public, State of New York  
Commission # 01GA6125865  
Qualified in Genesee County  
My Commission Expires April 25, 2017

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

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In the Matter of the Claim of

**KRISTEN LAZARZ**  
293 Cumberland Avenue  
Buffalo, New York 14220,

Claimant,

against

**COUNTY OF ERIE,**

Respondent.

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**NOTICE OF CLAIM**

To: COUNTY OF ERIE

Please take notice, that claimant Kristen Lazarz, pursuant to General Municipal Law §50-e, does hereby make a claim and demand against the County of Erie (the "County") for damages, and in support of such claim, states the following:

1. Claimant resides at 293 Cumberland Avenue, Buffalo New York 14220. Claimant's attorney is The Law Office Brian D. Doyle, PC, 76 Rosedale Avenue, Hamburg, New York 14075. The telephone number is (716) 955-9960.
2. Upon information and belief, the subject claim arose on August 13, 2015, at Central Police Services of Erie County, Buffalo, New York.
3. The nature of the claim is to recover damages for violation of Claimant's rights under various NY state and federal laws, including, but not limited to:

- a. the right to be free from retaliation, reprisal, and discrimination by the County for political activities and/ or legal recreational activities outside of working hours;
- b. the right to associate lawfully with people of her choosing; and
- c. the right to be free from discrimination based upon being a member of a protected class.

4. The injuries and damages claimed are that Claimant has suffered economic damage, loss of wages, loss of and damage to reputation, and physical and emotional distress as a result of the County's actions. The amount of damages is continuing and, upon information and belief, exceeds the jurisdictional limit of all lower courts which would otherwise have jurisdiction. Claimant seeks damages, together with attorneys' fees, interest, costs, disbursements, and for any further relief which the Court deems just and proper.

**WHEREFORE**, please take notice that said claim and demand is hereby presented for adjustment and payment. You are hereby notified that unless the said claim is adjusted and paid within the time provided by law from the date of presentation of this notice of claim, the claimant intends to commence an action in the Supreme Court of the State of New York, County of Erie against you for a sum which exceeds the jurisdictional limit of all lower courts which would otherwise have jurisdiction, together with attorneys' fees, interest, costs, disbursements, and for any further relief which the Court deems just and proper. Therefore, the claimant requests that this claim be allowed and paid by the respondent.

DATED: November 12, 2015  
Hamburg, New York

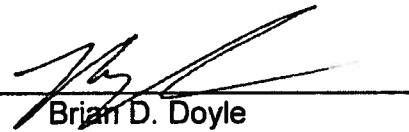


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Brian D. Doyle

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

I, BRIAN D. DOYLE, Esq., am attorney for the Claimant herein, admitted to the practice of law before the courts of the State of New York, and not a party to the above-entitled matter. I affirm the following to be true under the penalties of perjury pursuant to CPLR 2106. I have read the foregoing Notice of Claim and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.



---

Brian D. Doyle

SUPREME COURT OF THE STATE OF NEW YORK  
ERIE COUNTY

In the Matter of the Application of

JODI BURVID,

Petitioner,

-against-

ERIE COUNTY and TIMOTHY B. HOWARD,  
SHERIFF, ERIE COUNTY SHERIFF'S OFFICE ,

Respondents.

For Leave to Serve a Late Notice of Claim

INDEX NO. \_\_\_\_\_

Filed on \_\_\_\_\_

**NOTICE OF PETITION**

TO THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE, that upon the annexed Verified Petition of Jodi Burvid, containing a copy of the proposed notice of claim, along with an accompanying Memorandum of Law, the undersigned will apply to this Court, on Monday, February 22, 2016, or as soon thereafter as counsel can be heard, for an Order permitting Petitioner to file and serve a late Notice of Claim pursuant to General Municipal Law Section 50-e(5), (7). Responding papers must be served in accordance with CPLR 2214(b).

Dated: Cheektowaga, New York  
January 22, 2016

s/Harvey P. Sanders  
Harvey P. Sanders, Esq.  
Sanders & Sanders  
*Attorneys for Petitioner*  
401 Maryvale Drive  
Cheektowaga, NY 14225  
(716) 839-1489  
harvey.sanders@wnyemploymentlaw.com

To: Erie County  
Edward A. Rath County Office Building  
95 Franklin St.  
Buffalo, NY 14202

Erie County Sheriff's Office  
10 Delaware Ave.  
Buffalo, New York 14202



SUPREME COURT OF THE STATE OF NEW YORK  
ERIE COUNTY

In the Matter of the Application of

JODI BURVID,

Petitioner,

-against-

ERIE COUNTY and TIMOTHY B. HOWARD,  
SHERIFF, ERIE COUNTY SHERIFF'S OFFICE.

Respondents.

For Leave to Serve a Late Notice of Claim

INDEX NO. \_\_\_\_\_

Filed on \_\_\_\_\_

**VERIFIED PETITION**

Petitioner Jodi Burvid, for her verified petition for an Order pursuant General Municipal Law Section 50-e(5), (7) granting leave to serve a late notice of claim, by her attorneys, alleges as follows:

**PRELIMINARY STATEMENT**

1. Petitioner brings this special proceeding pursuant to General Municipal Law Section 50-e(5), (7) seeking an order granting leave to serve a late notice of claim.
2. A copy of the proposed notice of claim is attached hereto as **Exhibit 1**.

**JURISDICTION AND VENUE**

3. Pursuant to sections 504 and 506 of the New York Civil Practice Law and Rules, Petitioner commences this action in Erie County because the Respondents are the County and located in Erie County, NY, Petitioner resides in Erie County, NY, and the events occurred in Erie County, NY.
4. Jurisdiction is proper in this Court in accordance with General Municipal Law Section 50-e(7).

**THE PARTIES**

5. At all relevant times, Petitioner Jodi Burvid has been a citizen of the United States and the State of New York. Petitioner is a female.

6. Respondent County of Erie, including the Erie County Sheriff's Office, is located in the County of Erie. The Erie County Sheriff's Office Holding Center is located at 40 Delaware Ave., Buffalo, NY.

**FACTUAL BACKGROUND**

7. Petitioner began her full-time employment with Respondent in or about August of 1995 and during the relevant period held the position of Deputy Sheriff at the Erie County Holding Center.

8. Petitioner was discriminated against based on her sex in connection with an incident that occurred on September 23, 2014 at the Erie County Holding Center.

9. Upon Petitioner's arrival to work she entered the locker room and prepared for her shift, as she did every day.

10. Among the things Petitioner brought with her to work that day in her backpack was her lunch bag, her hairbrush, her cell phone, and her cell phone charger, as she did nearly every day.

11. Petitioner brought her lunch in a TOPS Supermarkets plastic grocery bag, as she often did.

12. When emptying her backpack for the beginning of her shift Petitioner's hairbrush, cell phone and charger accidentally fell out of her backpack into her lunch bag.

13. When Petitioner was putting her backpack in her locker, she noticed her hairbrush fell into her lunch bag and removed it.

14. However, Petitioner was unaware that her cell phone and charger had also fallen in her lunch bag. She believed they were still in her backpack.

15. Petitioner's lunch bag contained a full newspaper, a book, various food items, and even a flashlight.

16. Respondent has a policy forbidding cell phones in the secure areas of the holding center.

17. Petitioner was aware of the policy, had always complied with the policy, and intended to on the day in question.

18. Prior to her shift Petitioner did as she always did and placed her lunch bag near the back elevator in the kitchen area to store her lunch prior to the pre-shift lineup.

19. Petitioner then proceeded to the area of the holding center where the lineup occurs.

20. While Petitioner was attending line up, Sergeant Balys found her lunch bag and discovered it contained her cell phone and phone charger.

21. Upon Petitioner's return to the kitchen, she noticed her lunch was gone. The kitchen staff informed her that Sergeant Balys took it back to his office and instructed Petitioner to retrieve it there.

22. Sergeant Balys questioned Petitioner about what was in her lunch bag.

23. She described her lunch, but not her cell phone or charger, since she was unaware they had fallen into her bag.

24. Sergeant Balys eventually gave the lunch bag back to her (without the phone or charger) so she could report for her shift.

25. Petitioner was later directed to collect all of her belongings and was escorted by a sergeant to see Captain Hartman, where she was again questioned about her lunch bag and cell phone.

26. When she was told the phone and charger were in her lunch bag, Petitioner explained to Captain Hartman that she had no knowledge of her cell phone being in her lunch bag. She thought it was in her backpack, which was in her locker.

27. Petitioner was immediately put on administrative leave and ultimately terminated on October 28, 2014.

28. By terminating Petitioner, Respondent treated her differently than any male co-workers who previously had been found in possession of a cell phone in a secure area, none of who were terminated solely for possessing a cell phone.

29. Respondent also treated Petitioner differently than male co-workers who were caught with a cell phone after she was terminated, none of whom were terminated either.

30. Since Petitioner's termination, only other female employees have been fired for the same or similar conduct.

31. Petitioner grieved her termination to arbitration. By decision dated November 6, 2015, Petitioner's termination was affirmed.

**REASONS TO GRANT LEAVE TO SERVE A LATE NOTICE OF CLAIM**

32. Using the date of termination, October 28, 2014, Petitioner had until January 26, 2015 to serve a notice of claim on the County of Erie regarding sex discrimination.

33. The deadline to serve a summons and complaint on the County of Erie concerning any state law claims expires on January 26, 2016.

34. Petitioner files this petition for leave to serve a late notice of claim in order to preserve her New York State Human Rights Law sex discrimination claim against the County of Erie.

35. Petitioner did not immediately file a notice of claim because she challenged her termination through her collectively bargained for arbitration procedure and expected to get her job back.

36. The reason for the delay in bringing any formal claim separate from the grievance process is that Petitioner did not receive a decision from the Arbitrator until November 6, 2015, over a full year after she was terminated.

37. Following Petitioner's termination on October 28, 2014, she immediately filed a grievance challenging the termination.

38. From the outset, the County of Erie was aware that part of Petitioner's challenge was that her discipline was disparate to that of other males working in the Erie County Holding Center.

39. Petitioner and her Union raised the issue of disparate treatment based on sex in terms of the level of discipline throughout the grievance process.

40. The Union's brief on behalf of Petitioner submitted to the Arbitrator (attached hereto as **Exhibit 2**), which summarized the issues and arguments before the Arbitrator, confirms the issue of disparate treatment was part of the entire grievance process.

41. The brief not only raises the stipulated issue between the parties of whether termination is the appropriate discipline for the alleged act, but specifically identifies multiple instances of male employees who were simply found with a cell phone, nothing more, and were not terminated.

42. Moreover, a Joint Exhibit was entered into the record at the hearing and testimony was taken as to the level of discipline imposed on others who engaged in similar conduct to Petitioner.

43. The County of Erie, in its brief, admitted that it was aware of the disparate treatment Petitioner was subject to. (Attached hereto as **Exhibit 3**)

44. The County of Erie stipulated to the fact that “[p]rior to this case, possession of a cell phone in a secured area (without providing it to an inmate) had never before resulted in termination without progressive discipline.”

45. The County of Erie was well aware of the fact that Petitioner was the only employee terminated for the same or similar conduct at that time and that no male employees were.

46. Moreover, the County of Erie was certainly aware of the same or similar conduct occurring after Petitioner was fired on October 28, 2014 by male employees, and was certainly aware it did not fire those male employees.

47. The County of Erie actually fired other female employees for the same or similar conduct after it fired Petitioner, but has yet to fire any males.

48. Lastly, the Arbitrator himself was aware of the disparate treatment. He addressed it in the summarization of the Union’s position in his Opinion and Award. (Attached hereto as **Exhibit 4**)

49. Petitioner’s grievance was sent to arbitration and a hearing was held on March 10, 2015.

50. The record was closed out on October 5, 2015 and on or about November 6, 2015 the Arbitrator came to a determination affirming Petitioner’s termination.

51. The Arbitrator did not rule on Petitioner's discrimination claim.

**RELIEF SOUGHT**

52. For the forgoing reasons and the reasons stated in the accompanying memorandum of law, Petitioner respectfully requests leave to serve a late notice of claim for damages resulting in the October 28, 2014 termination.

53. No prior application for the relief requested herein has been made to this Court. WHEREFORE, Petitioner respectfully requests that this Court enter an Order be issued pursuant to General Municipal Law Section 50-e(5), permitting Petitioner Jodi Burvid to serve a late notice of claim regarding alleged sex discrimination and for further and different relief as may be just and proper.

Dated: Cheektowaga, New York  
January 22, 2016

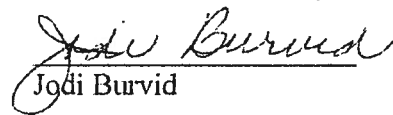
s/Harvey P. Sanders  
Harvey P. Sanders, Esq.  
Sanders & Sanders  
*Attorneys for Petitioner*  
401 Maryvale Drive  
Cheektowaga, NY 14225  
(716) 839-1489  
harvey.sanders@wnyemploymentlaw.com

VERIFICATION

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

JODI BURVID, being duly sworn, deposes and says:

That deponent is the Petitioner in the within action; that deponent has read the foregoing Petition and knows that contents thereof, and that the same is true to deponent's own knowledge, except as to matters stated to be alleged on information and belief, and as to those matters, deponent believes them to be true.

  
Jodi Burvid

Sworn to before me this 21  
day of January, 2016

  
Notary Public

DAVID DECHELLIS  
NOTARY PUBLIC, STATE OF NEW YORK  
ERIE COUNTY  
REG. NO. 02DE6302645  
COMM. EXP. 05/05/2018



NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

MELINDA L. BRYANT,

Complainant,

v.

ERIE COUNTY, DEPARTMENT OF SOCIAL  
SERVICES,

Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.  
**10179595**

Federal Charge No. 16GB601339

I, Melinda L. Bryant, residing at P.O. Box 84, Buffalo, NY, 14201, charge the above named respondent, whose address is 95 Franklin St., Buffalo, NY, 14202 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of race/color.

Date most recent or continuing discrimination took place is 11/30/2015.

See attached complaint.

### SUMMARY

OCSE has a consistent pattern of refusing to promote well qualified and eligible African Americans to the senior child support investigator position. Persons with far less experience than my 16 years of child support experience and 21 years of County seniority are regularly appointed:

	<u>Approx Seniority</u>		<u>Appointment</u>
Danielle Abraham	5	Caucasian	Prov → Perm 5/4/15
Frederick Collins	15	Caucasian	Permanent 5/4/15
Christa Dake	10	Caucasian	Permanent 11/30/15
John Kotaska	10	Caucasian	Provisional 2014
Tina Maglietto	10	Caucasian	Provisional 2014
Tricia Moorhouse	15	Caucasian	Prov → Perm 5/4/15
Sherrie Sieminski Grabowski	5	Caucasian	Permanent 5/4/15
Cheryl Wailand	15	Caucasian	Permanent 5/4/15

LaShawn Chinn and I were not offered a provisional appointment although she scored 90 and I 85 on the most recent qualifying list established on March 11, 2015.

The senior child support position may not been offered to me because of my February 20, 2013 and June 22, 2014 emails to the local CSEA Social Service Unit plus written inquiries to Erie County Personnel, Regional CSEA Labor Relations and Erie County Equal Employment Opportunity.

Despite actions detailed below, OCSE management's unfair labor practices continue. A proper resolution to my complaint is promotion to the senior child support investigator position plus grade 8 salary payment from the date of the first provisional appointment since the October 3, 2009 exam. My qualifying score for that senior child support investigator exam was also 85.

#### July 1999 – Present

My service as a child support investigator includes the following areas: customer service, enforcement, establishment and special projects. (See May 6, 2015 email to the Operations Manager, VICTORIA LEONE; Director of OCSE, KELLY GALLAGHER; and Legal Affairs Director, MARNI BOGART.

While KELLY GALLAGHER and MARNI BOGART responded to the May 6, 2015 email, VICTORIA LEONE has not.

February 20, 2013

On February 20, 2013, VICTORIA LEONE charged me in the elevator area of the 7<sup>th</sup> floor of the Rath Building. This incident was reported to the then CSEA Social Service Section President, Kevin Kumor.

As of this date, actions taken by OCSE administration and CSEA are unknown.

***Is VICTORIA LEONE's refusal to promote me retaliation?***

June 21, 2014

Article XXVIII Section 28.5b (page 41) of the CSEA Collective Bargaining Agreement (CBA) addresses noncompetitive class promotions. It states "**... where qualifications are substantially equal among such applicants, length of service with the County shall be controlling ...**"

On June 22, 2014, I notified the local CSEA Social Service Section that the above CBA was violated when provisional senior child support investigators with lower County seniority were selected – Danielle Abraham and Tricia Moorhouse. African Americans Melinda Bryant, LaShawn Chinn, Annette Cole and Michelle Mosely were not provisionally appointed. The CSEA Social Service Section President (Agnes Mabins) replied on July 6, 2014 that the CBA had not been violated.

On March 11, 2015, the qualifying list for the senior child support investigator was established. After the rule of 3 was followed, the next qualifying score was 85.

May 5, 2015

OCSE's operation manager (VICTORIA LEONE) announced on May 5, 2015 the appointment of 3 senior child support investigators who also scored 85, but have less than my 21 years of County seniority and 16 years of experience with the child support unit - Danielle Abraham, Tricia Moorhouse, and Sherrie Sieminski-Grabowski.

African American LaShawn Chinn scored 90. As of this writing, she has not been offered the senior child support investigator position.

May 6, 2015

My May 6, 2015 email to VICTORIA LEONE, KELLY GALLAGHER and MARNI BOGART reiterated my OCSE experience. During my face to face informal conversation with MARNI BOGART, I asked, 'Does VICTORIA LEONE's May 5, 2015 email indicate that I have been denied a promotion for the third time despite my seniority and experience?' The legal director stated the selection process was not complete.

July 6, 2015

Although no formal announcement has been made as of this writing, 2 additional persons who scored 85 were appointed senior child support investigators on approximately July 6, 2015 - Linda Hamilton and MaraLouise Jarosz.

It is my understanding that Linda Hamilton was offered and declined the provisional senior child support investigator position twice. It is also my understanding that the selection process was halted until Linda Hamilton agreed to specific terms of acceptance – the ability to take time off during the summer while technically working the mandatory 9-5 shift and shortened length of probation.

July 15, 2015

My email to the County personnel commissioner, David Palmer requested an explanation of the role of score, seniority and experience in the appointment of senior child support investigators

July 24, 2015

The County personnel commissioner's reply did not address the role of seniority and experience, acknowledge the past practice of appointment according to seniority or explain how OCSE's selection process complied with unbiased and fair civil service practices.

July 27, 2015

Mindy Czechowski, the classification and compensation chief's email also failed to answer my direct question regarding seniority.

September 16, 2015

While Ann Marinoff trained new County employees, she told them, "You need to be careful about her. She is mad she was denied a promotion because she has absolutely no interpersonal skills whatsoever." (Ann Marinoff was appointed to the senior child support investigator position per VICTORIA LEONE's May 5, 2015 email.)

I reported the disparaging remark to my immediate supervisor, Tommie Parker and MARNI BOGART, the director of legal affairs on Monday, September 21, 2015.

November 16, 2014

I filed a discrimination complaint with the Erie County Equal Employment Opportunity Office.

November 30, 2015

Although there has been no formal announcement as of this writing, Christa Dake began the duties of a senior child support investigator on November 30, 2015. Ms. Dake's appointment is the most recent example of OCSE's pattern of refusing to promote better qualified and eligible African Americans.

Prior to the March 11, 2015, qualifying list for the senior child support investigator position, Ms. Dake was offered but declined the provisional position. Ms. Dake took the test once and was appointed senior child support investigator. I took the senior child support investigator examination twice, scored 85 on each one, and have not been offered an appointment.

Ms. Dake began her county service approximately 10 years ago with OCSE as a data entry operator. My county service began in 1994 as a social welfare examiner. Since Ms. Dake's appointment to the child support investigator position, she has served only in enforcement. Since July 1999, I have served in customer service, enforcement, establishment and special projects.

December 7, 2015

Equal Employment Opportunity (EEO) Investigators Glenn E Belton (858-8604) and Lynn Kolodziej (858-7554) met with me to discuss my complaint, rights and responsibilities plus receive the attached information.

January 14, 2016

The above EEO Investigators informed me that they were unable to resolve the above issue with VICTORIA LEONE and KELLY GALLAGHER. They provided the attached "Notice of Right to File a Formal Complaint after the Completion of EEO Informal Complaint Counseling".

January 27, 2016

The proper resolution to my complaint is promotion to the senior child support investigator position plus grade 8 salary payment from the date of the first provisional appointment since the October 3, 2009 exam.

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of**

**ANNETTE COLE,**

**Complainant,**

**v.**

**ERIE COUNTY, DEPARTMENT OF SOCIAL  
SERVICES,**

**Respondent.**

**VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15**

**Case No.  
10180260**

**Federal Charge No. 16GB601828**

**I, Annette Cole, residing at 201 Madison St., Buffalo, NY, 14206, charge the above named respondent, whose address is 95 Franklin Street, Buffalo, NY, 14202-3959 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of disability, race/color, opposed discrimination/retaliation.**

**Date most recent or continuing discrimination took place is 2/24/2016.**

**See Attached Complaint**

RECEIVED

MAR 04 2016

New York State Division of Human Rights  
Complaint Form

REGIONAL OFFICE

CONTACT INFORMATION

My contact information:

Name: Annette Cole

Address: 201 madison st Apt or Floor #: \_\_\_\_\_

City: Buffalo State: Ny Zip: 14206-1519

REGULATED AREAS

I believe I was discriminated against in the area of:

- Employment
- Education
- Volunteer firefighting
- Apprenticeship Training
- Boycotting/Blacklisting
- Credit
- Public Accommodations  
(Restaurants, stores, hotels, movie theaters amusement parks, etc.)
- Housing
- Labor Union, Employment Agencies
- Commercial Space
- Internship

I am filing a complaint against:

Company or Other Name: Errie County Dept of Social Services

Address: 95 FRANKLIN ST

City: Buffalo State: Ny Zip: 14202

Telephone Number: 716 858 - 7511  
(area code)

Individual people who discriminated against me:

Name: Victoria Leone

Name: MARNI Bogant

Title: Operations mgr  
Child Support Unit

Title: Director of Legal Services

DATE OF DISCRIMINATION

The most recent act of discrimination happened on: 2 24 2016  
month day year

**BASIS OF DISCRIMINATION**

Please tell us why you were discriminated against by checking one or more of the boxes below.



You do not need to provide information for every type of discrimination on this list. Before you check a box, make sure you are checking it only if you believe it was a reason for the discrimination. Please look at the list on Page 1 for an explanation of each type of discrimination.

Please note: Some types of discrimination on this list do not apply to all of the regulated areas listed on Page 3. (For example, Conviction Record applies only to Employment and Credit complaints, and Domestic Violence Victim Status is a basis only in Employment complaints). These exceptions are listed next to the types of discrimination below.

**I believe I was discriminated against because of my:**

<input type="checkbox"/> <b>Age</b> (Does not apply to Public Accommodations) Date of Birth:	<input type="checkbox"/> <b>Genetic Predisposition</b> (Employment only) Please specify:
<input type="checkbox"/> <b>Arrest Record</b> (Only for Employment, Licensing, and Credit) Please specify:	<input type="checkbox"/> <b>Marital Status</b> Please specify:
<input type="checkbox"/> <b>Conviction Record</b> (Employment and Credit only) Please specify:	<input type="checkbox"/> <b>Military Status:</b> Please specify:
<input type="checkbox"/> <b>Creed / Religion</b> Please specify:	<input type="checkbox"/> <b>National Origin</b> Please specify:
<input checked="" type="checkbox"/> <b>Disability</b> Please specify: DUE TO COMPLICATIONS OF DIABETES AND CESTED ARTERIES	<input checked="" type="checkbox"/> <b>Race/Color or Ethnicity</b> I am the only African American SR. Investigator, with the most seniority and am consistently continued
<input type="checkbox"/> <b>Pregnancy-Related Condition:</b> Please specify:	<input type="checkbox"/> <b>Sex</b> subjected to capricious treatment that other SR. investigate are not. Please specify: <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Pregnancy <input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> <b>Domestic Violence Victim Status:</b> (Employment only) Please specify:	<input type="checkbox"/> <b>Sexual Orientation</b> Please specify:
<input type="checkbox"/> <b>Familial Status</b> (Does not apply to Public Accommodations or Education) Please specify:	<input checked="" type="checkbox"/> <b>Retaliation</b> (if you filed a discrimination case before, or helped someone else with a discrimination case, or reported discrimination due to race, sex, or any other category listed above) Please specify: AS A RESULT OF FILING A COMPLAINT FOR RETALIATION WITH NYS DIVISION FOR HUMAN RIGHTS



Before you turn to the next page, please check this list to make sure that you provided information **only** for the type of discrimination that relates to your complaint.

01/15/2015



## EMPLOYMENT OR INTERNSHIP DISCRIMINATION

Please answer the questions on this page only if you were discriminated against in the area of employment or internship. If not, turn to the next page.

How many employees does this company have?

- a) 1-3      b) 4-14      c) 15 or more      d) 20 or more      e) Don't know

Are you currently working for the company?

Yes

Date of hire:

01 / 19 / 1984  
Month      day      year

What is your job title?

Sr. Child Support Investigator

No

Last day of work:

(      /      /      )  
Month      day      year

What was your job title?

I was not hired by the company

Date of application:

(      /      /      )  
Month      day      year

### ACTS OF DISCRIMINATION

What did the person/company you are complaining against do? Please check all that apply.

- Refused to hire me  
 Fired me / laid me off  
 Did not call me back after a lay-off  
 Demoted me  
 Suspended me  
 Sexually harassed me  
 Harassed or intimidated me (other than sexual harassment)  
 Denied me training  
 Denied me a promotion or pay raise  
 Denied me leave time or other benefits  
 Paid me a lower salary than other workers in my same title  
 Gave me different or worse job duties than other workers in my same title  
 Denied me an accommodation for my disability  
 Denied me an accommodation for my religious practices  
 Gave me a disciplinary notice or negative performance evaluation

Other: Continue to single me out for intimidation because I brought their behavior to the attention of the Division for Human Rights

**DESCRIPTION OF DISCRIMINATION** - for all complaints (Public Accommodation, Employment, Education, Housing, and all other regulated areas listed on Page 3)

Please tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory. **PLEASE TYPE OR PRINT CLEARLY.**

On November 23, 2015 Marni Bogart, Director of Legal Services informed me that I would be transferred to another unit within the Child Support office. At that time, I asked her if I could be afforded an accommodation based on my disability. The Director of the office (Child Support Unit) is scheduled to be moved to a new office. I am currently in the building with the other employees that are moving.

I requested that my desk and work station not be moved until the entire office would be moved. I explained that my disability greatly affects my mobility, and that since my location at that time was close to restroom, attendance board, secondary work assignment (reception window) I asked if I could remain seated where I was. The Director, Marni Bogart granted that request (e-mail) attached.

On February 24, 2016, Operations Manager Victoria Leone denied this request (e-mail). I appealed to the Commissioner of the Office of Disability, Frank Cammarano, on 2/24/16.

If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. **PLEASE DO NOT WRITE ON THE BACK OF THIS FORM.**

**DESCRIPTION OF DISCRIMINATION** - for all complaints (Public Accommodation, Employment, Education, Housing, and all other regulated areas listed on Page 3)

Please tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory. PLEASE TYPE OR PRINT CLEARLY.

MR. Camaroffa said that he was  
would send a - email to Director  
Bogart requesting that I be  
granted an extended accommodation.  
Since my Desk and chair would  
be moved.

I received a telephone call from  
the Logistics Coordinator stating that  
I had 2 hrs to pack up my  
entire work cubicle before a  
crew arrived to relocate me to  
the other end of the office

I immediately contacted Commissioner  
Camaroffa to inquire if an extension  
of my accommodation had been addressed.  
The Commissioner ~~was~~ informed me that  
he did not receive any response to  
from Director Bogart.

on 3/2/16 I was the only investigator  
relocated to another section of the floor  
prior to relocation of entire floor

If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. PLEASE DO NOT WRITE ON THE BACK OF THIS FORM.

**NOTARIZATION OF THE COMPLAINT**

Based on the information contained in this form, I charge the above-named Respondent with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment), or filing my housing/credit complaint with HUD under Title VIII of the Federal Fair Housing Act, as amended (covers acts of discrimination in housing), as applicable. This complaint will protect your rights under Federal Law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law and/or to accept this complaint on behalf of the U.S. Department of Housing and Urban Development for review and additional filing by them, subject to the statutory limitations contained the in aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

  
Sign your full legal name

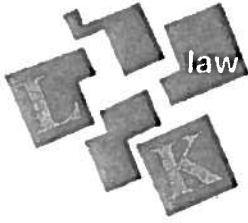
Subscribed and sworn before me  
This 4<sup>th</sup> day of March, 20 16

  
\_\_\_\_\_  
Signature of Notary Public

County: Erie Commission expires:

**CHRISTINE M. CEDERMAN**  
Notary Public - State of New York  
No. 01CE4965061  
Qualified in Erie County  
My Commission Expires April 16, 2018

**Please note: Once this form is notarized and returned to the Division, it becomes a legal document and an official complaint with the Division of Human rights. After the Division accepts your complaint, this form will be sent to the company or person(s) whom you are accusing of discrimination.**



*Law Office of*  
**LINDY KORN, PLLC**

Electric Tower  
535 Washington Street, Ninth Floor  
Buffalo, New York 14203

RECEIVED  
MAY 01 2017  
LEGAL AFFAIRS

**CONFIDENTIAL:**  
**FOR SETTLEMENT PURPOSES ONLY**

April 27, 2017

**SENT VIA CERTIFIED MAIL**

Erie Community College  
6205 Main Street  
Williamsville, NY 14221

**RE: Nicole M. Greco**

To Whom It May Concern:

I represent Nicole M. Greco in connection with her legal claims arising out of the age and gender discrimination and retaliation she has experienced as an employee of Erie Community College. This letter seeks to facilitate a resolution of Ms. Greco's claims without filing with the New York State Division of Human Rights. Pursuant to New York CPLR § 4547, this letter and its attachments are confidential.

Ms. Greco has shared with me the circumstances surrounding the discrimination, hostile work environment, and retaliation she has experienced while in the employ of Erie Community College. Ms. Greco has spelled out the unlawful discrimination she experienced at Erie Community College in the attached (and currently, unfiled) DHR complaint. (Exhibit 1: Draft DHR complaint).

My client is interested in resolving this matter quickly and amicably with Erie Community College. In the spirit of cooperation, Ms. Greco is reaching out to you in an effort to put these issues to rest so that both parties may move forward. Accordingly, Ms. Greco is willing to release her claims of discrimination and retaliation against the College if it agrees to the following settlement terms:

- 1) Review of admission policy and procedures by someone outside of the Health Sciences department;

• Phone (716) 856-KORN (5676) • Fax (716) 507-8475 • Email: lkorn@lkorn-law.com •  
• www.lkorn-law.com • buffalo-discrimination-attorney.com

- 2) mandatory diversity training for PJ Wiles, new department chair, & faculty related to the claim;
- 3) a positive or neutral reference;
- 4) the termination letter be permanently removed from Ms. Greco's employee file;
- 5) \$180,000 for lost earnings, emotional distress, medical bills, etc.; and
- 6) attorneys' fees.

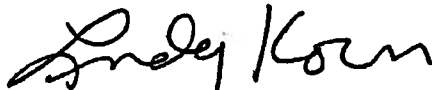
Ms. Greco is interested in arriving at an amicable resolution of this matter. Please note the attached document, the Request for Preservation of Electronic and Paper Evidence, which includes a list of all electronic and paper documents/evidence that Ms. Greco is requesting for you to preserve if we are unable to resolve this matter (Exhibit 2: Request for Preservation of Electronic and Paper Evidence).

If Erie Community College is interested in exploring an amicable resolution with Ms. Greco, please respond to me no later than Friday, May 5, 2017. If I do not hear from you by this time, I will advise my client accordingly.

My client is also open to the possibility of using a professional mediator to resolve this dispute, if necessary. My office is happy to work with you in arranging for a professional mediator to mediate this dispute rather than resorting to expensive and time consuming litigation.

Thank you for your time and attention. Please do not hesitate to contact me (716) 856-5676 or at lkorn@lkorn-law.com if you have any questions. I look forward to hearing from you.

Very truly yours,



Lindy Korn, Esq.  
LK/sbw

cc: Nicole M. Greco

# Exhibit 1

**NICOLE M. GRECO v. ERIE COMMUNITY COLLEGE**

I, Nicole M. Greco, residing at 377 Mill Street, Williamsville, NY 14221, charge Erie Community College, whose address is 6205 Main Street, Williamsville, NY 14221, with an unlawful discriminatory practice relating to employment on the basis of age, disability and retaliation in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law), §296(1)(a), Title VII of the Civil Rights Act of 1964, as amended.

**The allegations are:**

**PROTECTED CLASS: Age, Disability, and Retaliation**

**Background Information and Protected Classes/Activity**

1. I am Female.
2. I am 35 years old.
3. On July 5, 2016, I was hired by Erie Community College ("ECC") as the Dental Hygiene Program/Department Head.
4. Throughout my time at ECC, I witnessed discrimination at the hands of faculty and administration, including being forced to refuse a student's admission based on Muslim religion and/or religious garb.
5. On July 21, 2016 I met with a Muslim woman, Maryam Choudhury, regarding her 2016 application. Ms. Choudhury informed me that she had applied in 2016 but noticed that her application had been deleted from the online portal queue without providing notice or reason to the applicant (which is against ECC policy). Upon further inquiry I learned that the application had been purposefully deleted from the department's system because of the burka (traditional Muslim garb that covers the face and body) she wore in her photo ID.
6. Initially I went to PJ Wiles ("Wiles"), the Executive VP of Health Sciences and my supervisor, to complain about the discriminatory act. We spoke in person and through email. He ignored the issue and sent me to Darley Willis ("Willis"), the Director of Equity and Diversity at ECC. Eventually there was a discussion with all ten full time faculty members. I noted that I had wanted to take the student based on her exemplary performance in her prior schooling (she applied with a 4.0 GPA). However, I was faced with significant resistance, especially from a senior faculty member, Kathryn Alm ("Alm"). Wiles told me to "do whatever [Alm] tells you to do." I protested that this was blatant discrimination. In the end I was forced by the 10 faculty to lie to the student and claim that her dental assisting application knocked her dental hygiene application out of the system.
7. Two faculty members (Sharon Miller and Alm) attempted to excuse the situation by claiming that "if a student comes here they must comply with our dress code." However, after meeting with Ms. Choudhury, I learned that she would have no problem altering her religious garb to meet the dress code. Nevertheless, the discriminatory assumption of the faculty based on a photograph led to the Muslim applicant's rejection.



8. Within the first month of the Fall 2016 semester, two Muslim students were dismissed by the Junior Committee without explanation or accountability, and without any guidance of the Department Chair/V.P. I complained to Wiles and Willis, noting that I believed it was discriminatory, but the complaint was ignored.
9. Around this same time, students approached me stating that Alm, the faculty member who had been involved with the dismissal of the two Muslim students, as well as the situation with the Muslim applicant, had referred openly to Muslim students as "brown people." I complained about this to my supervisor on their behalf.
10. On September 21, 2016 the Junior Committee wanted me to refuse a Hasidic Jewish student religious leave. When I relayed to the faculty that this was against ECC policy, many faculty simply grew angry and stated their belief that it was "bullshit." I brought the issue to Willis's attention. She told the faculty that I was correct. Eventually, after extensive discussion on the issue at faculty meetings I passed around a list of religious holidays and reaffirmed that we must comply, as supported by Willis. This made the faculty upset and further alienated me.
11. I also experienced discrimination first-hand during my time at ECC. Throughout my time at ECC numerous comments were made regarding my age. This started during the interview, where Alm and Debbie Graeff noted that they had kids older than me.
12. Faculty have made comments regarding my age as being an indicator for lacking the necessary experience or qualifications for the position I held, despite my extensive experience that in reality makes me more than qualified for the position I held at ECC.
13. Many of the faculty openly and unapologetically discussed my medical history, including medical issues that I deal with to this day. I was told on multiple occasions that I needed to take medication because I "worry too much." This was especially disheartening as I do suffer from several medical issues, including generalized anxiety. My supervisor and the full time faculty were aware of this, yet they used it as a way to demean me. I not only confidently and successfully manage my medical issues, but I have even presented to classes about my personal medical struggles to help others overcome their own adversity.
14. As I raised all of the issues noted above, including the discrimination of Muslim students and applicants, the work environment grew more hostile. Alm went so far as to allege poor work performance to the Dental Hygienists' Association of New York State without any factual basis, resulting in my discontinuation of association membership and public embarrassment.
15. In September 2016, I was prevented from acquiring a variety of departmental resources, including PowerPoints and syllabi, necessary to effectively perform my accreditation duties. In refusing my access, ECC reported me to the Union for "infringing upon academic freedom."
16. For the remainder of my time at ECC I was prevented from effectively performing my duties. This included advisors ignoring Federal Academic guidelines I explained to them in December 2016; the filing of erroneous grievances accusing me of stealing classes in February 2017; and belittling and demoralizing me for the remainder of my time thereafter while I attempted to get ECC up to speed with serious safety practices that are crucial for the health and safety of the students and patients.

17. On March 21, 2017 I was finally terminated under the guise of "poor behavior," "incompetence," and "insufficient service." I was humiliated and embarrassed, as I represent none of those egregious accusations. I fulfilled my job responsibilities to the best of my ability and advocated for a better program on behalf of the college and students I was hired to serve.

**Actionable Events**

18. As a result of the constant harassment, intimidation and discrimination I suffered from anxiety and depression, as well as physical manifestations of that stress in the form of a flaring of gastrointestinal issues.

19. Despite my complaints about discrimination, Respondent did nothing.

20. After complaining about the discriminatory conduct I was terminated for illegitimate reasons.

Based on the foregoing, I charge Respondent with an unlawful discriminatory practice relating to employment on the basis of age and gender in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law), §296(1)(a), Title VII of the Civil Rights Act of 1964, as amended.

I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

---

Nicole M. Greco

STATE OF NEW YORK    )  
COUNTY OF Erie    ) SS:

Nicole M. Greco, being duly sworn, deposes and says: that she is the complainant herein; that she has read (or had read to her) the foregoing complaint and knows the content thereof; that the same is true of her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, she believes the same to be true.

---

Nicole M. Greco

Sworn before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2017

---

Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires \_\_\_\_\_

# Exhibit 2

**Request for Preservation of Electronic and Paper Evidence for Erie Community College**

We are writing to advise you, Erie Community College (the "Employer"), of your legal obligation to preserve all relevant evidence. That evidence includes but is not limited to all email and text messages, and any other electronic communications, sent or received by any and all employees that involve Ms. Greco's complaint of discrimination (collectively, the "Custodians"). Such electronic communications must be preserved from the date Ms. Greco started working for the Employer through to the present.

It is not legally sufficient to order your staff to go through the emails of the above Custodians, and ask them to preserve those they deem relevant. The Employer is required to immediately preserve and cease the routine destruction/deletion/overwriting of all email sent to or from and/or received by all of the Custodians. The Employer must also cease the routine destruction or overwriting of any backup tapes which could contain their emails. Any emails which are live on the Employer's email server must remain in reasonably accessible format. If you are not sure how to do this, we suggest you retain legal counsel who knows.

The Employer is also required to preserve all evidence, including any electronic and non-electronic evidence, concerning Ms. Greco's employment. This includes any and all information on Employees employer-issued cell phones and other electronic devices.

Modern computer forensics has made it virtually impossible to conceal alterations and destruction of evidence. If it is forensically determined that the Employer failed to preserve relevant electronically stored information, it will be responsible for the significant expense of forensically restoring such evidence. Electronically stored information cannot be permanently destroyed, but steps can be taken to make it more expensive to retrieve, and courts have not hesitated to impose the costs of such retrieval.

If you maintain insurance, including general liability, Directors and Officers, Employment Practices Liability, or other insurance which might cover these claims, its failure promptly to notify its carrier could result in a loss of coverage.

CHARGE OF DISCRIMINATION		AGENCY <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; see Privacy Act Statement before completing this form.			
New York State Division of Human Rights <i>(State or local Agency, if any)</i>			
NAME <i>(Indicate Mr., Ms., or Mrs.)</i> Linda Grant		HOME TELEPHONE NO. <i>(Include Area Code)</i> 716-830-6856	
STREET ADDRESS 130 Haller Avenue	CITY, STATE AND ZIP CODE Cheektowaga, NY 14211	COUNTY Erie	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME <i>(If more than one list below.)</i>			
NAME Erie County Youth Detention Services		NO. OF EMPLOYEES/MEMBERS  50 or More	TELEPHONE NUMBER <i>(Include Area Code)</i> 716-923-4000
STREET ADDRESS 1 Niagara Plaza	CITY, STATE AND ZIP CODE Buffalo, NY 14202	COUNTY Erie	
NAME		TELEPHONE NUMBER <i>(Include Area Code)</i>	
STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY	
CAUSE OF DISCRIMINATION BASED ON <i>(Check appropriate box(es))</i> <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER <i>(Specify)</i>			DATE DISCRIMINATION TOOK PLACE EARLIEST                      LATEST 2/17/08                      Present <input checked="" type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE <i>(If additional space is needed, attach extra sheet(s))</i> : I am a longstanding employee of Erie County Youth Detention Services, working most recently in the position of youth detention worker. I am currently an employee of Erie County, but I have been on leave and have not worked since on or about February 17, 2008, following a hand injury sustained at work. I have been discriminated against because of a perceived disability by not being allowed to return to work following my injury. I could have returned to work as far back as on or about November 4, 2008, which was the date I was first cleared by my surgeon to return to work as he stated I had no disability. This determination was later confirmed by two separate physicians in or about October and December of 2009. It has now been nearly two years and five months since I have last worked for Erie County Youth Detention Services, even though I was able to return to work nearly two years ago. I feel this is a clear indication of disability discrimination as Erie County perceives me to be disabled even though it has been determined that I am not.  -continued on second sheet-			
<input checked="" type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - <i>(When necessary to meet State and Local Requirements)</i>  I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
I declare under penalty of perjury that the foregoing is true and correct.		SIGNATURE OF COMPLAINANT	
Date	Charging Party <i>(Signature)</i>	SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE <i>(Day, month, and year)</i>	

**CHARGE OF DISCRIMINATION**

AGENCY  
 FEPA  
 EEOC

CHARGE NUMBER

This form is affected by the Privacy Act of 1974; see Privacy Act Statement before completing this form.

New York State Division of Human Rights

(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)

HOME TELEPHONE NO. (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NO. OF EMPLOYEES/MEMBERS TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  
 RETALIATION  AGE  DISABILITY  OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE  
EARLIEST LATEST

CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

-continued-

Furthermore, at the time of the injury I was 57 years old, which indicates to me I may be being discriminated against because of my age. I have been cleared by my physicians as physically able to return to work. Moreover, I have been injured while employed by Erie County in the past, and have promptly and effectively returned to work following those injuries. I am currently 59 years old and have no restrictions that would limit my ability to return to work as a youth detention worker with Erie County.

I believe Erie County's refusal to let me return to work reflects unlawful discrimination based on a perceived disability and on age, in violation of the Americans With Disabilities Act of 1990, the ADEA and the New York State Human Rights Law, each as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

*Linda Grant*

Date

Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

July 15, 2010.

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

\_\_\_\_\_  
JACQUELINE KRETZMON,

Plaintiff,

v.

Case No. \_\_\_\_\_

ERIE COUNTY, SHERIFF'S OFFICE,

\_\_\_\_\_  
Defendants.  
\_\_\_\_\_

**COMPLAINT**

Plaintiff Jacqueline Kretzmon ("Plaintiff" or "Kretzmon") alleges as follows:

**PARTIES**

1. The Plaintiff, Jacqueline Kretzmon, is a natural person with a place of residence at 60 Andres Place, Cheektowaga, NY 14225.
2. Defendant, Erie County Sheriffs Office, is located at 10 Delaware Ave., Buffalo, NY 14202.

**JURISDICTION AND VENUE**

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and as conferred by 42 U.S.C. §§ 2000e-3(a) (amended 1972, 1978, and by the Civil Rights Act of 1991, Pub. L. No. 102-166) and 42 U.S.C. §1983.
4. Defendants are subject to the jurisdiction of this Court and venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) as the acts and omissions giving rise to the claims in this complaint occurred within the Western District of New York.



### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5. Lt. Kretzmon has exhausted administrative remedies prerequisite to bringing this claim as follows:
6. On August 19, 2010, Lt. Kretzmon filed a charge of discrimination with the New York Division of Human Rights (DHR) and the Equal Employment Opportunity Commission (EEOC), alleging unlawful discriminatory practice relating to employment because of age, opposed discrimination/retaliation, sexual orientation, and sex. The DHR assigned the case number as 10143037. The DHR cross filed the Complaint with the EEOC as Federal Charge No. 16GA004604.
7. More than sixty days have passed since Lt. Kretzmon submitted her Complaint to the DHR on August 19, 2010. The DHR found no grounds for probable cause and the EEOC adopted the charges of the DHR on June 2, 2011. Lt. Kretzmon had 90 days from the date of the EEOC decision to file suit in federal court, making this filing timely.

### **FACTUAL BACKGROUND**

8. Lt. Jacqueline Kretzmon, Plaintiff, was hired by the Defendant on April 30, 1990 and currently holds the position of Lieutenant in charge of Records and Booking at the Erie County Holding Center.
9. In November 2007, Lt. Jacqueline Kretzmon engaged in protected activity when she filed a complaint with the New York State Division of Human Rights (DHR) against her employer, the Erie County Sheriff's Department, for sexual harassment, employment discrimination, and retaliation. Chief Reardon was named as a "bad actor" in Lt. Kretzmon's complaint. The DHR case number was 10119254.

10. The DHR case was disposed of through a private settlement in 2008, which required, among other things, that Chief Reardon not be in Lt. Kretzmon's chain of command.
11. In addition, the settlement agreement stated that Defendant would investigate and prosecute, if warranted, the sexually demeaning statements Lt. Kretzmon's co-worker made about her. Specifically, Officer Doxbeck, in the presence of Kathy McLaughlin, referred to Lt. Kretzmon as a "carpet muncher." Defendant failed to investigate Officer Doxbeck, in violation of the Defendant's contract with Lt. Kretzmon. On information and belief, Doxbeck was moved into Lt. Kretzmon's area after Chief Reardon was reassigned to supervise Lt. Kretzmon.
12. Since Lt. Kretzmon filed her complaint, she has been subjected to continuous low-grade harassment which has increased in scope and magnitude since the beginning of 2009.
13. Chief Reardon is now in Lt. Kretzmon's chain of command.
14. Defendant breached the contracted settlement agreement by placing Chief Reardon back into Lt. Kretzmon's chain of command on February 6, 2009 and allowing him to issue direct orders to Lt. Kretzmon on a continual basis since that date.
15. On February 11, 2009 Lt. Kretzmon engaged in protected activity, notifying Defendant that reassigning Chief Reardon to a position where he was directly in Lt. Kretzmon's chain of command was a breach of the 2008 settlement agreement.
16. That day, Chief Reardon entered the office where Lt. Kretzmon was with her three Sergeants. Chief Reardon spoke to one of Lt. Kretzmon's Sergeants, Sgt. Harris, in front of her. Chief Reardon gave Sgt. Harris instructions about how to handle inmate transfers, a task that Lt. Kretzmon had already completed.

17. On February 24, 2009, Lt. Kretzmon again engaged in protected activity, sending a letter notifying Defendant that Lt. Kretzmon's supervisors seemed to be unaware or unheeding of her settlement contract with the Defendant and the limitations that agreement placed upon her and Chief Reardon. Kristin Klein Wheaton, attorney for Defendant, sent an email stating that Lt. Kretzmon would not be supervised by Chief Reardon. When Lt. Kretzmon questioned what "supervised" meant, Ms. Wheaton clarified via email the next day that she referred to "the provisions relating to Reardon not being in Kretzmon's chain of command."
18. Chief Reardon was not removed from Lt. Kretzmon's chain of command. Rather, he remained above her in her chain of command, continually giving her direct orders.
19. From February 27 until March 2, 2009, Lt. Kretzmon went on vacation. When she returned from vacation on March 3, she found a note, written to her that told her to go to Professional Standards Division (PSD) and to bring a union representative. Lt. Kretzmon did not know what the PSD would be about, but chose to not bring a union representative. At the PSD, Lt. Kretzmon was questioned about the way three officers had handled an inmate allegedly raping another inmate.
20. Because the deputies in charge of these inmates had neglected to properly report the incident, Lt. Kretzmon did not learn of the incident until 10 days later, January 26, 2009, when the inmate's lawyer showed up and explained what had happened. When Lt. Kretzmon did learn of the incident, she immediately began a proper investigation. She stayed at work until 4 a.m. that day, filling out reports. She made a point to copy Deputy Superintendent Leary on her reports. Lt. Kretzmon also gave Deputy Superintendent

Leary a written statement, explaining that the investigation into the incident was not finished, and asking Deputy Superintendent Leary to continue the investigation.

21. The PSD investigators interrupted Lt. Kretzmon's retelling of the facts of the incident to tell her that the investigation was coming down on her. PSD Investigator Giglio said to Lt. Kretzmon, "They are throwing you under the bus. Do you see the headlights?"
22. On Friday, March 13, 2009, Defendant's Undersheriff Doyle temporarily assigned Lt. Kretzmon to Day Watch, in charge of Records and Booking.
23. On Tuesday, May 12, 2009, Lt. Kretzmon again engaged in protected activity, explaining to Ms. Wheaton, via email, that Lt. Kretzmon's supervisor, Jail Deputy Superintendent Koch, seemed to be unaware of Lt. Kretzmon's Settlement Agreement and that Chief Reardon seemed to be "testing the waters under the new administration, and seeing how far he can push things with" Lt. Kretzmon.
24. On July 15, 2009 Lt. Kretzmon faced a disciplinary hearing for the alleged rape of the inmate in February 2009.
25. On information and belief, neither the Deputy nor the Sergeant who failed to report the incident was given disciplinary hearings.
26. From June 2008 through March 2009, all other Lieutenant's who worked at the jail were assigned to work each shift with another Lieutenant, so that there would be two Lieutenant's per shift to cover the Watch Commander and Booking and Records positions. Lt. Kretzmon was the only Lieutenant who Defendant forced to work each of her shifts alone, with no other Lieutenant to assist her. As such, Defendant required Lt. Kretzmon to cover both the Watch Commander and Booking and Records positions on her own. Also as a result of Lt. Kretzmon being forced to work alone, Lt. Kretzmon was unable to take

emergency days off without the assistance of Jail Deputy Superintendent Leary or Undersheriff Doyle. No other Lieutenant had to go through such onerous procedures.

27. On February 24, 2009, Lt. Kretzmon wrote a letter to Sheriff Howard, reporting an online blog called "Stop Howard 2009." The blog had been run and written by Defendant's employees in defiance of Defendant's policy. Lt. Kretzmon advised that the postings, including photos and comments about supervisors, were becoming increasingly graphic, distasteful, disgusting, and disturbing. As of February 23, Lt. Kretzmon reported that, although she had not personally been mentioned in the blog as of yet, she found the comments about other co-workers to be humiliating and sexually derogatory.

28. In the fall of 2009, Defendant's employees began posting comments about Lt. Kretzmon in an online blog. In these comments, Defendant's employees called Lt. Kretzmon a coward, said that she had "balls... and a penis," called her a "cancer" to the department, "a weasel," "a pig," "a fuck up," "a shit bag." One entry called her a "deal breaker" who "brought more grief to that place than all the other political hacks in admin combined." Another entry said that Lt. Kretzmon was "the biggest piece of shit to ever come through the department. She was a shit deputy, a horrible sergeant, and a scumbag Lt." A later entry amended this entry stating, "...and the worst person, or dog, that has ever lived," calling her a "pint sized piece of shit" who "can't have more than 3 friends. That includes the outside world as well." Another entry said promoting her to Lieutenant was a "fuck up" and that she should be demoted. Another entry asked the question, "DOES ANYBODY FUCKING KNOW FOR A FUCKIN FACT IF FUCKING GLASCOTT KNOWS ABOUT FUCKING ASSHOLE KRETZMON BEING A FUCKING NO

GOOD CUNT OR NOT?" A later entry asked the webmaster to "start an anti-Kretzcock section? Pleeeaaase?"

29. Lt. Kretzmon reported to Deputy Superintendent Leary that Lt. Kretzmon had found one of Lt. Kibler's thumbdrives in a computer. Lt. Kibler's thumbdrive contained one of the blog entries. Defendant, however, told Lt. Kretzmon that they were not able to determine who had posted on the blog but that the Defendant's computers would block such postings. Defendant did not check their computer hard drives to determine who had been posting on the blog. Defendant did not investigate Lt. Kibler.
30. In fall 2009, an inmate attempted to escape. The video of the incident shows that while the inmate is preparing to escape, the Sergeant who was with the inmate failed to take care of his responsibilities, and that the Sergeant's lapse enabled the inmate to obtain the items he needed to begin his escape. The video next shows that the officer who was responsible for the housing unit had improperly abandoned his radio on a desk, enabling the inmate to further his escape attempt. Another officer failed to properly check a door, aiding the inmate's escape attempt. The two officers who were charged with securing an exit door assumed that the inmate was a guard when the inmate asked them to open the door. The officers opened the exit door for the inmate, without first verifying the inmate's identity.
31. When the Commission of Corrections (COC) reviewed the details of the escape, the COC determined that the officers mentioned above had erred but that Lt. Kretzmon was not responsible for the attempted escape. She had followed Policy and Procedure as soon as she learned of the situation. In the official Commission of Correction report about the attempted escape, Lt. Kretzmon and her actions were not cited at all as being improper, derelict, or incorrect.

32. On November 12, 2009, Defendant held a disciplinary hearing against Lt. Kretzman for the attempted break out. The Defendant alleged four charges, including "failure to properly supervise your shift before and after the incident."
33. No other Watch Commander has ever been held to a disciplinary hearing about an incident in the jail in which they were not directly, physically involved. Even when, for two days, a Sergeant and five Deputies visited an inmate at night to threaten and beat him, the two Watch Commanders on duty were not brought up on charges or given a disciplinary hearing.
34. The two officers who opened the door without checking the identity of the person asking them to open the door were not disciplined. The officer who failed to check the door was not disciplined. The Sergeant who failed to properly take care of the inmate, allowing the inmate to obtain the items he needed to escape, was given two weeks suspension. However, one of those weeks was his vacation week. The officer who had abandoned the radio was fired but then reinstated.
35. On March 10, 2010, Sgt. Thomas Thompson, Deputy Jonathan Weir, and Deputy Peter Eagle were fired because of an alleged incident of inmate abuse. Lt. Kretzman had discovered the officers' wrong-doing and reported it to PSD.
36. That day, at a staff meeting, Superintendent Koch told the staff in front of Lt. Kretzman that they had to "cover for each other." Sergeant Johnstone said, "You and I are from the old school, isn't there something... I mean, they have families."
37. In mid-April 2010, Chief Reardon began taking charge of a larger portion of the duties in the Holding Center.

38. April 23, 2010, Lt. Kretzman was ordered to correct a problem with the phone system. Lt. Kretzman wrote an email to Provisional Sergeant Kuppel and to Provisional Lieutenant Harris advising them of the problem. Neither officer responded. Lt. Kretzman followed up by speaking to the two men. The Lieutenant responded, "So? What's wrong with it?" The Provisional Sergeant agreed to take care of it but never did. Lt. Kretzman finally made the changes herself.
39. Also in late April 2010, Lt. Kretzman told one of her Sergeants, Sgt. Kuppel, that he would be learning a new job. Sgt. Kuppel responded, "I don't think so. I'm not doing it." Lt. Kretzman told him again the next week that he would be learning a new job, and Sgt. Kuppel responded with the same insubordinate answer.
40. In April or May of 2010, Deputy Superintendent Leary told Lt. Kretzman that they intended to conduct a disciplinary hearing against her regarding the alleged rape of the inmate back in February 2009. Lt. Kretzman reminded Deputy Superintendent Leary that Defendant had already held the hearing on July 15, 2009 at the 10 Delaware facility.
41. In early May 2010, one of Defendant's employees told Lt. Harris that Lt. Kretzman was "out to get him" and was having him "investigated." Neither accusation was true. However, the false rumor permanently damaged Lt. Kretzman's relationship with Lt. Harris, who no longer felt that he could trust Lt. Kretzman.
42. The male supervisors had a television in their break room. The female supervisors did not. In the past when this disparate treatment was brought to Defendant's attention, Defendant had removed the male's television which instigated the male employees to retaliate against the female employees. The male supervisors' television had been replaced, but the female supervisors' continued to have none.



43. In mid-May 2010, Lt. Kretzman engaged in protected activity, asking for a television for the women's break room, Defendant responded that the males' television would be removed instead if Lt. Kretzman insisted on the women having amenities equal to the men. The television remained in the males' room. None was given to the females.
44. On May 27, 2010 one of Defendant's employees wrote "Fire Kretzman" with permanent marker, in the lunch room, near the phone. Lt. Kretzman filed a complaint regarding the incident. Defendant's investigation into the matter was insufficient to find the culprit.
45. On May 28, 2010 Defendant made Lt. Kretzman work double duty as the Sergeant and Lieutenant for Booking and Records.
46. During the week of June 14, 2010 Chief Reardon again gave Lt. Kretzman an order through one of Lt. Kretzman's junior officers. He told Sgt. Kuppel to tell Lt. Kretzman to write up a Suicide Screening Form for Sentenced Inmates.
47. On June 16, 2010 Lt. Kretzman ordered Sgt. Knezevic and Sgt. Kuppel, via email, provide her with information about some files. Both ignored the order, did not respond, and did not do the work.
48. At noon on June 21, 2010 Chief Reardon failed to include Lt. Kretzman in a meeting about how her department was to be run. Lt. Kretzman happened to walk by and notice the discussion. When she joined the discussion, Chief Reardon assigned her to create daily lists regarding the medical processes for him and to take over escorting prisoners for the nurse. Escorting prisoners for the nurse is a menial task typically assigned to lower ranking Sheriff's Deputies, not Lieutenants.
49. At 2 p.m. that same day, Lt. Kretzman had a discussion with Deputy Superintendent Leary. During the discussion Lt. Kretzman asked a question to clarify how the medical

screening would be done. Deputy Superintendent Leary reprimanded Lt. Kretzmon for asking the question, telling Lt. Kretzmon, "Don't be negative, don't tell me what you can't do; tell me what you can do." The reprimand did not appropriately correspond to Lt. Kretzmon's tone or question.

50. On June 22, 2010, Deputy Superintendent Leary entered the booking area and ordered Lt. Kretzmon to clean the old medical forms out of the area, a task which Lt. Kretzmon had already completed. Then Deputy Superintendent Leary began speaking to a Sergeant and some Deputies in the presence of inmates about what they thought about some new ideas for inmate screening. Sgt. Kuppel, who was part of the conversation, gestured to Lt. Kretzmon and said to her, "What do you think?"

51. Lt. Kretzmon began to give her input on how the process might work best, suggesting that questions should be asked in the booking area, rather than out in reception, and that the nurses needed time to get accustomed to the new routine. Before she could finish her sentence, Deputy Superintendent Leary cut Lt. Kretzmon off, still in the presence of inmates, again reprimanding Lt. Kretzmon, saying that "we all have to work together."

52. When Lt. Kretzmon mentioned to Deputy Superintendent Leary that the inmates needed phones that worked, Deputy Superintendent Leary again cut Lt. Kretzmon off before she could finish her sentence, telling Lt. Kretzmon that it was on her list. Lt. Kretzmon asked her deputy, Jack Robinson, to please tell Deputy Superintendent Leary about the need for working phones. Deputy Robinson did and Lt. Kretzmon listened to him. Several deputies and at least one Sergeant watched this interaction, seeing that Deputy Superintendent Leary would not listen to Lt. Kretzmon, choosing instead to speak to Lt. Kretzmon's junior officers in front of Lt. Kretzmon.

53. When Deputy Superintendent Leary left the room, Lt. Kretzmon began discussing the idea of placing a medical screening area in the Echo level reception area. Lt. Kretzmon has proposed the idea to Deputy Superintendent Leary, but Defendant had chosen to not include Lt. Kretzmon's idea into the plan for the Department of Justice. Lt. Kretzmon's junior officers Sgt. Kuppel and Deputy Robinson laughed and suggested that maybe they should present the idea to Deputy Superintendent Leary instead of Lt. Kretzmon. It appeared that Deputy Superintendent Leary would not listen to Lt. Kretzmon.
54. At 8 a.m. on June 23, 2010, Chief Reardon instructed Lt. Kretzmon to sign off on a form that detailed an officer's use of force on a prisoner. Lt. Kretzmon had not been on duty at the time. Lt. Isch was the commanding officer who had been on duty and who had filled out the report of the incident.
55. At 9:15 that same day, Lt. Kretzmon walked by Chief Reardon having a discussion with Sgt. Kuppel. Sgt. Kuppel waived Lt. Kretzmon over and told her that Chief Reardon wanted Lt. Kretzmon to change the inmate medical forms he had ordered her to work on June 21, two days earlier. Again, Chief Reardon instructed Lt. Kretzmon's junior officer to give Lt. Kretzmon orders.
56. At 9:30 that morning, Deputy Superintendent Leary called Lt. Kretzmon into her office. Deputy Superintendent Leary reprimanded Lt. Kretzmon, saying that they all had to work together. When Lt. Kretzmon questioned Deputy Superintendent Leary as to what she meant, Deputy Superintendent Leary stated that someone had reported that Lt. Kretzmon intended to grieve Chief Reardon's order for Lt. Kretzmon to escort inmates for the nurse. Lt. Kretzmon had had no intention of grieving the order. However, because escorting is a

deputy's job, Lt. Kretzmon would have been within her rights to file such a grievance. Lt. Kretzmon had chosen to follow the order and was being reprimanded for a false rumor.

57. At 2:10 that afternoon, Sgt. Kuppel entered Lt. Kretzmon's office and told her, unsolicited, that he did not want to get in the middle of anything between Chief Reardon and Lt. Kretzmon and that from that point forward Sgt. Kuppel would refer everything to Lt. Kretzmon.
58. On June 30, 2010 Lt. Kretzmon completed the inmate medical screening lists as per Chief Reardon's June 21<sup>st</sup> order. When she delivered them to his office at 10:30, Chief Reardon rejected them, saying that he had not ordered her to compile lists, that he instead wanted fingerprint logs. When Lt. Kretzmon assured him that he had requested the lists, Chief Reardon responded, "I can get that from Ceil, I said I wanted the fingerprint log." At which point Deputy Superintendent Leary appeared in Chief Reardon's office and gave him the fingerprint logs.
59. At 11 a.m. that day, Sheriff Howard spoke to Lt. Kretzmon about what an impressive job she had done with a report she had completed.
60. On July 1, 2010 Chief Reardon came into the booking area and spoke to Sgt. Reynolds. When Sgt. Reynolds told Chief Reardon that she had reported to Lt. Kretzmon about medical, Chief Reardon said loudly, in front of the entire booking area Lt. Kretzmon supervised, that if Sgt. Reynolds had any questions about medical, she was not to talk to her Lieutenant, Lt. Kretzmon, but to speak directly to him.
61. On July 9, 2010, Defendant again made Lt. Kretzmon work double duty.
62. On July 13, 2010 Chief Reardon assigned Lt. Kretzmon to conduct daily inmate disciplinary hearings in addition to her regular job duties. Previously, the hearings had

been run by the afternoon shift. The afternoon shift's main responsibility was to run the hearings.

63. The next day, July 14, Lt. Kretzmon spoke to Captain Hartman, who had previously delineated which shifts were to perform which tasks. Captain Hartman told Lt. Kretzmon that he had advised Chief Reardon that to move the disciplinary hearings to Lt. Kretzmon's day shift would create a very unevenly distributed workload for the day versus afternoon shifts and explained why the afternoon shift had been assigned to conduct the hearings. Chief Reardon responded to Captain Hartman that he didn't care who thought the workload was unevenly distributed, that he wanted the change made so that Lt. Kretzmon's shift had to take on the hearings in addition to their normal workload. Prior to being assigned to conduct hearings, Lt. Kretzmon's work logs were full, with no empty time.
64. No additional booking and records work was given to the afternoon shift. Nor was any of the day shifts work offset onto any other shift to accommodate this new assignment.
65. That same day, Lt. Kretzmon found a form Chief Reardon had given to the booking nurse and booking deputies, whom Lt. Kretzmon supervised. Lt. Kretzmon had seen Chief Reardon hand the nurses papers and asked whether she needed to know of any changes on behalf of her deputies. Chief Reardon had said no, but the forms were to be used by the deputies. Lt. Kretzmon only learned of the new process by accident even though she is supposed to oversee the department.
66. On July 15, 2010, Lt. Kretzmon filled out a complaint that the women's break room still did not have a television. A small, dirty, older model television was installed 2 months later. The males' television was 27 inches; the females' television was 19 inches.

67. Lt. Kretzman went to the medical area and got checked because she was feeling so unwell from the stress. Her blood pressure was so high, she was sent to Erie County Medical Center where she was hospitalized for 3 days. She was then out sick from work for 2 weeks and took 1 week of vacation. After being absent from work for 3 weeks, when she returned on Monday, August 9, 2010, she went to an 8 a.m. inmate disciplinary hearing. When she arrived, she learned that no inmate disciplinary hearings had been conducted in the past 10 days, leaving her with a backlog of 24 hearings to complete. Later that day, when Lt. Kretzman told Deputy Superintendent Leary that Lt. Kretzman's medical condition was probably related to stress, Deputy Superintendent Leary responded sarcastically, "what makes you so stressed?"
68. On August 11, 2010, Deputy Superintendent Leary again told Lt. Kretzman that Defendant was going to proceed with a disciplinary hearing against Lt. Kretzman for the alleged rape of an inmate in February 2009. Deputy Superintendent Leary told Lt. Kretzman that it would occur the next day, August 12. Again, Lt. Kretzman told Deputy Superintendent Leary that Defendant had already held such a hearing on July 15, 2009 at the 10 Delaware facility and that Mr. Doyle had presided over the hearing. Deputy Superintendent Leary said that Mr. Doyle did not remember doing the hearing. Lt. Kretzman emailed the date to Deputy Superintendent Leary as confirmation that the hearing had already occurred. Lt. Kretzman then left work at 10 a.m. with a headache.
69. On August 20, 2010 Chief Reardon switched Lt. Kretzman's and Lt. Harris' respective leadership groups, inconveniencing Lt. Kretzman.
70. Chief Reardon also took Lt. Kretzman out of the Suicide Prevention Workshop and placed her in the Detox Group, even though both groups only had a few meetings left until they

concluded. Lt. Kretzmon had prepared extensively for the Suicide Prevention Workshop. Lt. Kretzmon had not participated in any of the Detox Group's meetings and had little to contribute to the group, as it only met twice more after she was assigned to join them.

71. On August 25, 2010 Deputy Superintendent Leary questioned Lt. Kretzmon's handling of an inmate disciplinary hearing. An inmate had made some comments to a female deputy. The female deputy had written a report on the incident that made it sound like the incident was not so bad as to require the inmate to "get time." Deputy Superintendent Leary felt that because the inmate was a rapist, he should not be permitted to make any comments to a female deputy.

72. A week prior, Lt. Kretzmon had overseen an inmate appeal hearing. The inmate had been given 60 days "Keep Lock" as punishment for an altercation. However, when Lt. Kretzmon and Deputy Superintendent Leary viewed a video of the incident, it revealed that the inmate had only been defending himself. The Lieutenant who had unjustly punished the prisoner without reviewing the evidence was not questioned or reprimanded for his bad judgment.

73. On August 27, 2010 Deputy Superintendent Leary interrupted Lt. Kretzmon's work to order her to go out to the garage to check the old records and log books, to see if they could be disposed of. The garage was filthy and the task was menial. There were two other employees, a Sergeant and a Lieutenant, who were not busy, who could have handled checking on the old records and logs, to ascertain if they were garbage. Deputy Superintendent Leary chose to make Lt. Kretzmon interrupt her work to check on items that were likely garbage, and that would likely not be removed for some time.

74. On August 30, 2010 Defendant made Lt. Kretzmon work double duty because Lt. Harris was assigned to go to Six Sigma training. Lt. Kretzmon was not invited to this training that would have benefitted her career.
75. On August 31, 2010 Defendant made Lt. Kretzmon work double duty for the same reasons as the day before.
76. That day Lt. Kretzmon was supposed to attend a bi-weekly meeting with Deputy Superintendent Leary and the county clerks at 2 p.m. Lt. Kretzmon and a records clerk named Maryann Gruber went to the classroom at the time and location where the last meeting was held. They waited for 10 minutes but no one showed up. Lt. Kretzmon went to find Deputy Superintendent Leary. Deputy Superintendent Leary's receptionist called Deputy Superintendent Leary's cell phone, but got no answer. At 2:25, they phoned the county clerk's office and were told that the meeting had been moved to another building. Lt. Kretzmon hurried over to the meeting, arriving 30 minutes late. Ms. Gruber told Deputy Superintendent Leary, "Nobody told us the meeting was here!" To which, Deputy Superintendent Leary replied, "I forgot." After the meeting, Deputy Superintendent Leary told the records clerk that she didn't know Ms. Gruber was working that day. Deputy Superintendent Leary ignored Lt. Kretzmon, not saying a word to her. Shortly after, Ms. Gruber told Lt. Kretzmon that Ms. Gruber had been speaking to Deputy Superintendent Leary, but when Lt. Kretzmon walked by them Deputy Superintendent Leary stopped talking.
77. On September 1, Deputy Superintendent Leary gave the records clerk a copy of the notes from the meeting. Deputy Superintendent Leary did not give Lt. Kretzmon a copy of the



notes. Lt. Kretzmon asked the clerk for a copy of the notes and the two discussed how obvious it was that Deputy Superintendent Leary was shutting Lt. Kretzmon out.

78. That day, all of the other booking and records supervisors attended a meeting, to which Lt. Kretzmon was not invited. Instead, Defendant made Lt. Kretzmon remain in booking and records, working overtime, and covering for both of the sergeants attending the meeting.

79. Also that day, Lt. Kretzmon learned information from a provisional Sergeant about how the facility was going to be run, information that was directly pertinent to Lt. Kretzmon's department. The clerk who had accompanied Lt. Kretzmon to the clerk's meeting discussed with Lt. Kretzmon that the provisional sergeant knew more about what was going to happen in Lt. Kretzmon's department than Lt. Kretzmon did. The clerk stated that she thought the Defendant was trying to push Lt. Kretzmon out of booking and records.

80. On Wednesday, September 8, 2010, someone decapitated and cut the front legs off of a rat and left in on Lt. Kretzmon's driveway at her home. Deputy Giglio from PSD investigated the incident right away, as did Mr. Lobbins from The Department of Equal Employment Opportunity (EEO).

81. The next day, September 9, Lt. Kretzmon learned that Jonathan Weir had had an arbitration hearing the previous day, the same day that the rat was placed in Lt. Kretzmon's driveway. Jonathan Weir was one of the officers who had been fired for abusing an inmate, following Lt. Kretzmon discovering and reporting the abuse. Lt. Kretzmon was told that Jonathan Weir would be coming back to work. Lt. Kretzmon informed PSD of the coincidence between Jonathan Weir's hearing and the placement of the rat. PSD investigated and they believed the rat had been cut and placed there

intentionally, that it appeared to potentially be witness tampering, and that they believed the timing of Jonathan Weir's hearing and the placement of the rat was not a coincidence.

82. Shortly after, Lt. Kretzmon's physician diagnosed her with hypertension induced by stress and put her on blood pressure and anti-anxiety medication.

83. Friday, September 10, 2010, Lt. Kretzmon's health deteriorated from the stress of her workplace. She went to the nurse at work; her blood pressure was escalated and she felt unwell.

84. September 14, 2010 Lt. Kretzmon again felt unwell and experienced lightheadedness and high blood pressure.

85. September 16, 2010 Chief Reardon pulled a Sergeant from Lt. Kretzmon's section, forcing her to work double duty.

86. At 4 p.m. that day, Lt. Harris explained to Lt. Kretzmon that he is leading a think tank, comprised of Sergeants and Deputies who work under Lt. Kretzmon. They will be working to stream line the booking process. Despite Lt. Kretzmon's 20 years of experience, 7 of which she spent as a supervisor, 4 of which she spent supervising booking and records, Lt. Kretzmon was not asked for her input. Defendant passed her over to instead work with her subordinates, without informing her.

87. On September 19, 2010, Matthew Spina of the Buffalo News ran an article about Lt. Kretzmon. Lt. Kretzmon's co-workers told her that they believed it was leaked by someone who wanted her fired.

88. On September 22, 2010, Lt. Kretzmon found a picture of a woman in a binder of work documents, including the inmate roster and housing sheet. The picture of the woman had been altered to remove an approximately 1 ½ inch hole where her mouth had been. Lt.

Kretzman turned the photo over to Chief Love, explaining that the material was sexually suggestive and inappropriate for the workplace. Lt. Kretzman felt unwell, got checked by medical again, and went home with high blood pressure.

89. On her way out, she spoke to Lt. Evans. Lt. Kretzman had noticed that some of the Sergeants were spending work time napping, playing fantasy football, working out, or writing on Facebook. Lt. Kretzman suggested to Lt. Evans that the Sergeants needed to be more vigilant. Lt. Evans replied that "They don't have enough time. They're so busy."
90. Lt. Kretzman dropped the obscene photo off with Undersheriff Wipperman and left to see her doctor. Her doctor, Dr. Tussing, diagnosed Lt. Kretzman with stress related hypertension and placed her on an ACE inhibitor for blood pressure.
91. The next day, Lt. Kretzman handed in her report on the obscene photo to Chief Love. She felt unwell again and left work. She was forced to call in sick to work the next day because her blood pressure and the medication she had been placed on were making her feel woozy and weak.
92. On September 28, 2010, Lt. Harris arrived at 2:00 p.m. to take over for Lt. Kretzman, who was scheduled to leave at 2:30. Instead, Lt. Harris sat in Chief Reardon's office, chatting and having coffee. At 2:00, when Lt. Harris's shift began, Chief Reardon called Lt. Kretzman and assigned her to do a project immediately. The project was a large one, and was the type of work a secretary should have been doing. That afternoon, as Lt. Kretzman had been preparing to leave, the records area that Lt. Kretzman supervised was especially busy because her department had to correct a mistake Lt. Harris had made the day before in sending too many inmates to the penitentiary, in addition to several other problems that had arisen at the end of her shift. At 3:35, over an hour past the end of her

shift, Lt. Kretzmon completed the project, with the help of a clerk, and delivered it to Chief Reardon. Chief Reardon told Lt. Kretzmon that he wanted some additional documents. Lt. Kretzmon put together the documents and delivered them to Chief Reardon at 3:50 p.m. Lt. Harris was still having coffee and chatting with Chief Reardon.

93. On October 7, 2010, Lt. Kretzmon followed Policy and Procedure in denying a deputy from rescinding his vacation purely to spite another Deputy. Superintendent Koch rescinded Lt. Kretzmon's order.
94. On October 8, 2010, Chief Diina allowed another Lieutenant to choose his own Sergeant. When Lt. Kretzmon asked if she would be allowed to do the same, Diina at first would not allow it, then acquiesced. Lt. Kretzmon chose a gay female officer named Sgt. Reynolds. On information and belief, Lt. Harris did not like Sgt. Reynolds. Defendant then questioned Lt. Kretzmon's choice, stating that Sgt. Reynolds had served primarily on the line, making her unqualified for the Booking and Records position. However, 13 of the previous 15 Sergeants and Lieutenants who were appointed to Booking and Records came from the line.
95. Shortly after Lt. Kretzmon insisted that she be allowed to choose Sgt. Reynolds, Defendant ordered Lt. Kretzmon to move out of her office and into the Sergeant's office. Defendant ordered Lt. Kretzmon's Sergeant to vacate her office and post herself in the booking area with no desk. Lt. Kretzmon told Defendant that such a move would be counterproductive, since she had to work in coordination with her Sergeant continuously throughout the shift. Lt. Kretzmon needed to keep her staff together in order to complete the work assigned to them, and so was forced to share an office with the Sergeants. The

office was small and cramped. Lt. Kretzmon's former office remains vacant and unused, but she is not permitted to use it.

96. On October 14, 2010, Chief Reardon sent an email to Lt. Kretzmon stating that violating the chain of command can be grounds for discipline. Chief Reardon is in Lt. Kretzmon's chain of command, though his assignment is in violation of the settlement agreement between Lt. Kretzmon and the Defendant.
97. On October 18, 2010, Lt. Kretzmon learned that Thomas Thompson, another of the officers who had been fired for abusing an inmate, was getting his job back.
98. On October 19, 2010, Defendant again confronted Lt. Kretzmon about the February 2009 incident in which an inmate had been raped. Superintendent Koch entered Lt. Kretzmon's office to tell her again that criminal acts must be reported to the patrol service for investigation. Lt. Kretzmon again told Superintendent Koch that she had both spoken to and written a report to Deputy Superintendent Leary, stating that further investigation was needed. Superintendent Koch again told Lt. Kretzmon that she now understands to notify patrol when a criminal act occurs and that that is how they are leaving it.
99. On October 20, 2010, Lt. Kretzmon received an email from Lt. Harris, explaining what the group of men who were streamlining Lt. Kretzmon's department was doing. The group of male officer's had named themselves "Reardon's Raiders," all of whom Lt. Kretzmon outranked.
100. Lt. Harris was assigned to compile statistics. Lt. Kretzmon had previously completed her statistics on an almost monthly basis for a year. Lt. Harris compiled statistics for July 21 until August 8 and September 21 until September 26. In addition, Lt. Kretzmon did the vast majority of the work for records, bookkeeping, and classification. Lt. Harris did not

contribute to this work. Lt. Kretzmon also took care of the gun boxes and restocking of forms and paperwork. Lt. Harris did not contribute to this work either.

101. On October 21, 2010, Lt. Kretzmon was ordered to pick up the letter Superintendent Koch was submitting to PSD regarding the incident from February 2009, for which Lt. Kretzmon had been disciplined because her Deputies and Sergeants had violated orders when an inmate was raped. The Deputies and Sergeants who had violated the orders and the deputy who had allegedly tried to cover up the incident still were not disciplined.
102. On November 10, 2010, Lt. Kretzmon overheard Lt. Harris say about her, "I don't know what would be better...if she was demoted or fired or maybe she'll just die."
103. Lt. Kretzmon is frequently in a position in her job in which her life is potentially in danger. Especially when she is in contact with inmates, Lt. Kretzmon relies upon the support and unhesitating back-up of her fellow officers to keep her safe.
104. On March 11, 2011, Lt. Harris sent Lt. Kretzmon an email stating that, per Dr. Heidelberger, a certain inmate was not allowed to be brought into the jail. The email also stated that if Lt. Kretzmon had questions, she could contact Lt. Harris. Lt. Kretzmon did not understand the email, and so replied to the email, asking "Why and where is he supposed to be? (I was unaware that Dr. Heidelberger ran the facility)." Lt. Harris became angry with Lt. Kretzmon because she had replied by email rather than by phone. He stated that he was also upset because Lt. Kretzmon had questioned what he wrote. Lt. Kretzmon is not employed by Dr. Heidelberger, nor is he in Lt. Kretzmon's chain of command. However, Lt. Harris began to yell at Lt. Kretzmon saying repeatedly, "I'm sick of your smart ass comments" and "keep your smart ass comments to yourself." Lt. Harris shouted these comments in front of the other staff members.

105. After Lt. Kretzmon reported Lt. Harris's inappropriate comments, Defendant forced Lt. Kretzmon to work overtime every day for approximately one month, stating that Lt. Harris had claimed that he felt uncomfortable being alone with Lt. Kretzmon.
106. In early April 2011, Defendant selected Lt. Harris and Sgt. Irene Jerge to attend a two day seminar in Albany about the NYS Warrant System. Defendant did not make Lt. Kretzmon aware of the seminar until after the Defendant selected the other officers, preventing Lt. Kretzmon from gaining valuable knowledge with which to accomplish her job and to advance her career.
107. On August 19, 2011, Lt. Kretzmon was again assigned double duty. She confronted the provisional Lieutenant, Lt. Evans, who was the watch commander. He told Lt. Kretzmon that the Sergeants made the assignments. A Lieutenant outranks a Sergeant. Lt. Kretzmon said, "so you mean to tell me that sergeants assigned me to cover a sergeant position?" Lt. Evans replied yes.
108. One of Defendant's Deputies, Deputy Doxbeck, called Lt. Kretzmon a "carpet-muncher," a term that is sexually offensive and derogatory toward homosexuals. Defendant was obligated to investigate the comments, as per the settlement contract. On information and belief, Defendant has failed to investigate Deputy Doxbeck.
109. Chief Reardon has continued to be in her chain of command since February 2009. Chief Reardon continues to give Lt. Kretzmon direct orders.
110. In August 2011, the Defendant had a problem distributing and tracking the distribution of inmate handbooks. Lt. Kretzmon proposed a solution that would save time and paperwork. When she explained her idea to her superior officer, Capt. Hartman, he rejected it, stating that he wanted to continue to use the current way, even though it was

not effective. Sometime later that day or the next, Sgt. Knezevic, a male officer who is subordinate to Lt. Kretzmon, presented Lt. Kretzmon's idea to Capt. Hartman. When Lt. Kretzmon came to work the next day, Chief Rodriguez explained to Lt. Kretzmon that the Defendant would be adopting the "new idea" Sgt. Knezevic had come up with. Lt. Kretzmon explained to Chief Rodriguez that it had been her idea. Lt. Kretzmon then asked Capt. Hartman why her idea was rejected when she presented it, but found to be a good idea when her male, subordinate officer presented it. Capt. Hartman responded that he had not been in the mood to hear what she had said, when she had said it.

111. The Erie County Holding Center blog, as of August 4, 2011, contained a poll as to whether J K (Jacqueline Kretzmon) should be fired and showed a photo labeled "aka>>> JK THE RAT FUCK." The accompanying photo showed a dead rat, caught in a trap.

## **FIRST CAUSE OF ACTION**

### **Retaliation in Violation of Title VII**

112. Lt. Kretzmon realleges and reasserts the allegations contained in paragraphs above as though fully set forth herein.

113. "In order to present a prima facie case of retaliation under Title VII... a plaintiff must adduce evidence sufficient to permit a rational trier of fact to find [1] that he engaged in protected participation or opposition under Title VII, [2] that the employer was aware of this activity, [3] that the employer took adverse action against the plaintiff, and [4] that a causal connection exists between the protected activity and the adverse action, i.e., that a retaliatory motive played a part in the adverse employment action." *Cifra v. General Electric Co.*, 252 F.3d 205, 216 (2<sup>nd</sup> Cir. 2001).



114. Lt. Kretzman engaged in protected activity: in November 2007, when she filed a complaint against the Defendant with the New York Division of Human Rights; on February 11, 2009, when she wrote a letter to the Defendant explaining that Chief Reardon had been improperly placed back into her chain of command; on February 24, 2009, when she wrote a letter to the Defendant explaining that Chief Reardon had been improperly placed back into her chain of command; on May 12, 2009, when Lt. Kretzman wrote an email to the Defendant stating that Chief Reardon was still unlawfully in her chain of command, that Chief Reardon was seeing how far he could push her under the new administration, and that her superior officers seemed to be unaware of the contract they were breaching; in the fall of 2009, when Lt. Kretzman reported finding evidence as to who had posted the derogatory and degrading comments about her in an online blog; on January 19, 2010, when Lt. Kretzman reported three of Defendant's employees' abuse of an inmate; in May 2010, when Lt. Kretzman asked the Defendant for equal accommodations in the men's and women's break rooms; on July 15, 2010, when Lt. Kretzman sent a letter to the Defendant explaining the harassment, retaliation, and hostile work environment to which the Defendant was subjecting her; on July 15, 2010, when the Sheriff filed a complaint with the EEO on Lt. Kretzman's behalf, explaining the disparate treatment to which the Defendant had subjected her; on March 11, 2011, when Lt. Kretzman reported to Defendant that Lt. Harris had made inappropriate comments to her; and on August 11, 2010, when Lt. Kretzman filed a complaint against the Defendant with the New York Division of Human Rights.

115. The Defendant knows about each of these instances of protected activity because Lt. Kretzmon's complaints and reports were all made directly to the Defendant via Lt. Kretzmon's superior officers.
116. After Lt. Kretzmon filed her first DHR complaint in 2007, Defendant committed an adverse action against Lt. Kretzmon in breaching the settlement contract from 2008, placing Chief Reardon in Lt. Kretzmon's chain of command.
117. After Lt. Kretzmon notified Defendant that this assignment was unlawful, Defendant committed at least two additional adverse actions against Lt. Kretzmon.
118. First, Defendant further required Lt. Kretzmon to take direct orders from Chief Reardon, again in violation of Defendant's settlement contract with Lt. Kretzmon.
119. Second, Defendant's superior officers, including but not limited to Chief Reardon, refused to speak to Lt. Kretzmon, and instead repeatedly gave her orders through her junior officers, in front of her. A jury will properly infer that when Defendant's superior officers gave Lt. Kretzmon orders through her subordinate officers while Lt. Kretzmon was present, Defendant usurped Lt. Kretzmon's authority and embarrassed her in front the officers she was assigned to command.
120. After Lt. Kretzmon again notified Defendant that Defendant's assigning Chief Reardon to be Lt. Kretzmon's superior officer was unlawful, Defendant's PSD Investigators informed her that Defendant was throwing her under the bus in regards to an incident at the jail in which Lt. Kretzmon had acted according to protocol. A jury will properly infer that Defendant possessed a retaliatory animus toward Lt. Kretzmon from the PSD Investigator's statements

121. After Lt. Kretzmon notified Defendant that Chief Reardon was acting in a retaliatory manner and that Defendant was breaching their settlement contract, Defendant took at least three adverse actions against Lt. Kretzmon.
122. First, Defendant forced Lt. Kretzmon to attend a specious disciplinary hearings for event in which she had acted strictly according to protocol. By contrast, Defendant failed to discipline the insubordinate officers who had violated their orders, causing the escalation of the incidents. Defendant also failed to discipline the other Lieutenants who had violated rules and procedures.
123. Second, Defendant forced Lt. Kretzmon to be the only Lieutenant who worked without an accompanying Lieutenant on duty for 10 months.
124. Third, Defendant allowed Lt. Kretzmon's co-workers to post offensive, derogatory comments about her in an online blog about the Holding Center, from which action and omission, a jury will properly infer that the Defendant condoned the retaliation.
125. After Lt. Kretzmon reported that she had found evidence showing who at least one of the officers posting on the blog was, Defendant took at least two more adverse actions against Lt. Kretzmon.
126. First, Defendant failed to investigate the employees who posted on the blog even after Lt. Kretzmon gave the defendant evidence as to the identity of one of the bad actors. From this omission, a jury will properly infer that the Defendant condoned the retaliation.
127. Second, Defendant held another specious disciplinary hearings for an event in which she had acted strictly according to protocol. By contrast, Defendant again failed to discipline the insubordinate officers who had violated their orders, causing the escalation of the incident.

128. After Lt. Kretzmon reported three of her co-workers for abusing an inmate, those three officers were fired and the Defendant took at least four adverse actions against Lt.

Kretzmon.

129. First, the same day that three officers were fired for abusing an inmate, an offense which Lt. Kretzmon had uncovered and reported, Defendant's Superintendent of the Prison made an announcement in front of her at a staff meeting. Defendant's Superintendent of the Prison stated to Lt. Kretzmon and her colleagues that they needed to "cover for each other." A jury will properly infer from this event that the Defendant had a retaliatory animus. For the Superintendent of the Prison to say in front of Lieutenant Kretzmon and her colleagues, that they need to "cover for each other," in the immediate context of three officers being fired because an officer, namely Lt. Kretzmon, had not covered for those officers, would reasonably dissuade an employee from engaging in protected activity.

130. Second, Defendant allowed Lt. Kretzmon's junior officers to be insubordinate to her and to defy direct orders.

131. Third, Defendant threatened Lt. Kretzmon that Defendant was going to hold more disciplinary hearings against Lt. Kretzmon for incidents in which hearings had already been held.

132. Fourth, Defendant allowed employees to spread rumors about Lt. Kretzmon that damaged her working relationships with fellow officers.

133. After Lt. Kretzmon requested that the female employees get break room accommodations equal to the male employees, Defendant took at least twelve adverse actions against Lt. Kretzmon.

134. First, Defendant permitted an employee to write "Fire Kretzmon" in the lunch room.

135. Second, Defendant insufficiently investigated the incident and was unable to find employee who had written it.
136. Third, Defendant repeatedly made Lt. Kretzmon work double duty.
137. Fourth, Defendant's superior officers, including but not limited to Chief Reardon, continued to repeatedly give her orders through her junior officers, in front of her. From these acts, a jury will properly infer that the Defendant was usurping Lt. Kretzmon's authority and embarrassing her in front of her subordinate officers.
138. Fifth, Defendant's Chief Reardon excluded Lt. Kretzmon from meetings about how her department would be run.
139. Sixth, Defendant reprimanded Lt. Kretzmon for imaginary infractions.
140. Seventh, Defendant refused to allow Lt. Kretzmon to give input and information about how her department was run, instead allowing only Lt. Kretzmon's junior officers to speak on the subjects.
141. Eighth, Defendant failed to invite Lt. Kretzmon to meetings in which all other supervisors and officers junior to Lt. Kretzmon in her department met to discuss running the department. Instead, Defendant required Lt. Kretzmon to work overtime and double duty.
142. Ninth, Chief Reardon ordered Lt. Kretzmon to sign off on an incident for which she was not present or on duty.
143. Tenth, Chief Reardon assigned Lt. Kretzmon to a project then, when Lt. Kretzmon handed it in, he pretended he had not assigned her the project and that she had done the wrong work.

144. Eleventh, Chief Reardon ordered Lt. Kretzmon's staff to not speak to her, but to speak directly to him.

145. Twelfth, Chief Reardon assigned an egregiously disparate amount of work to Lt. Kretzmon compared to the other Lieutenants. The unequal distribution of work was so severe that another officer senior to Lt. Kretzmon pointed out to Chief Reardon how unfair the work assignments were, yet the assignments did not change. The senior officer's statement will allow a jury to properly infer that the Defendant had a retaliatory animus toward Lt. Kretzmon.

146. After Lt. Kretzmon wrote formal letters of complaint to the Defendant and EEO, Defendant again took an adverse action against Lt. Kretzmon. Defendant's Deputy Superintendent mocked Lt. Kretzmon for being sick from the stress of her workplace. A Jury will properly infer from Lt. Kretzmon's supervisor's comment that the Defendant had a retaliatory animus toward Lt. Kretzmon.

147. After Lt. Kretzmon reported the inappropriate comments of her co-worker, Defendant took adverse action against Lt. Kretzmon, forcing her to work overtime every day for approximately one month.

148. After Lt. Kretzmon filed a complaint with the DHR against the Defendant for the Defendant's disparate treatment of her, Defendant took at least fifteen adverse actions against Lt. Kretzmon.

149. First, Defendant again threatened Lt. Kretzmon that Defendant was going to hold more disciplinary hearings against Lt. Kretzmon for incidents in which hearings had already been held.

150. Second, Defendant again forced Lt. Kretzmon to attend a specious disciplinary hearings for events in which she had acted strictly according to protocol.
151. Third, Chief Reardon switched Lt. Kretzmon's schedule, nullifying work she had developed and inconveniencing her.
152. Fourth, Defendant ordered Lt. Kretzmon to do menial tasks, such as secretarial work, housekeeping, and deputy escort work on top of her already full work schedule, despite the availability of other, junior staff and officers to do the work.
153. Fifth, Defendant continued to make Lt. Kretzmon work double duty.
154. Sixth, Defendant did not allow Lt. Kretzmon to attend training that would have helped her career.
155. Seventh, Defendant's Deputy Superintendent failed to inform Lt. Kretzmon that a meeting had been moved, causing Lt. Kretzmon to miss the first half of the meeting.
156. Eighth, Defendant's Deputy Superintendent then chose to give the meeting notes to a clerk rather than Lt. Kretzmon. Defendant so pervasively and obviously cut Lt. Kretzmon out of the circle of information and administration of her own department that multiple staff commented to Lt. Kretzmon about it. From Lt. Kretzmon's co-workers' comments a jury will properly infer that the Defendant had a retaliatory animus toward Lt. Kretzmon.
157. Ninth, Defendant created a think tank named "Reardon's Raiders" to streamline Lt. Kretzmon's department but did not allow her to participate, despite her experience, rank, and seniority.
158. Tenth, Defendant's employee decapitated a rat and placed it in Lt. Kretzmon's driveway. A subsequent Erie County Holding Center blog posting about Lt. Kretzmon featured a dead rat and was titled with Lt. Kretzmon's initials.

159. Eleventh, though PSD felt that the incident might be witness tampering, Defendant failed to appropriately investigate the incident.
160. Twelfth, when officers placed sexually obscene material in a work binder that Defendant looked through, Defendant failed to investigate or discipline the employees responsible.
161. Thirteenth, Chief Reardon required Lt. Kretzmon to do projects at the last minute that required her to stay unexpectedly past her shift, while Chief Reardon simultaneously allowed the Lieutenant on duty to drink coffee and chat in Chief Reardon's office.
162. Fourteenth, Defendant currently allows a blog of the Erie County Holding Center to post a quiz as to whether or not Lt. Kretzmon should be fired, and features a photo of a dead rat titled with her initials.
163. Fifteenth, Chief Reardon remains in Lt. Kretzmon's chain of command, giving her direct orders.
164. Defendant took adverse actions against Lt. Kretzmon after each and every time that she engaged in protected activity. Lt. Kretzmon engaged in protected activity at least eleven times, and Defendant responded by taking at least forty-two adverse actions against her.
165. As a result of Defendant's retaliation, Lt. Kretzmon experienced a severe deterioration of her health, fear, anxiety, humiliation, shame embarrassment, emotional pain and suffering, and loss of enjoyment of life.



## **SECOND CAUSE OF ACTION**

### **Breach of Contract**

166. Plaintiff repeats each and every allegation set forth herein in paragraphs above as though fully set forth herein.

167. In 2008, Defendant entered into a contract with Lt. Kretzmon.

168. In the contract, the Defendant was named "Respondent."

169. Section 2 (a) of the contract stated "Respondent shall guarantee that for the duration of Lt. Kretzmon's employment by Respondent, Lt. Kretzmon and Michael Reardon, currently holding the position of Chief, will not be assigned to positions placing them in direct chain of command with each other."

170. From February 6, 2009 through the present, Defendant violated the terms of the contract by assigning Chief Michael Reardon to be directly in Lt. Kretzmon's chain of command.

171. On page 4 of the settlement contract, the last sentence of Section 2 states that the Defendant would continue to investigate Deputy Doxbeck, who referred to Lt. Kretzmon using a sexually explicit and derogatory term. Upon information and belief, Defendant has failed to follow through on its contractual obligation to investigate Deputy Doxbeck.

## **THIRD CAUSE OF ACTION**

### **Retaliatory Personnel Action by Employer, in Violation of**

### **New York State Labor Law §740**

172. Plaintiff repeats each and every allegation set forth herein in the paragraphs above as though fully set forth herein.

173. When an employee discloses to a supervisor or to a public body an activity, policy, or practice of the employer which violation creates and presents a substantial and specific danger to the public health or safety, the employer may not take any retaliatory personnel action against the employee. NY Lab. L. §740(2)(a).

174. On January 19, 2010, Lt. Kretzmon disclosed to Defendant's Professional Standards Division that she had discovered that three of the Defendant's employees had been violently abusing an inmate in an attempt to coerce the inmate into informing on other inmates.

175. Defendant's Professional Standards Division is supervisory to Lt. Kretzmon.

176. Law enforcement officials' perpetrating repeated, unlawful, violent abuse of an inmate presents a substantial and specific danger to the public health and safety.

177. Defendant took at least 32 retaliatory personnel actions against Lt. Kretzmon in response to her disclosing the unlawful abuse.

178. First, the day that three officers she reported were fired, Defendant's Superintendent of the Prison made an announcement in front of her at a staff meeting that they needed to "cover for each other." A jury will properly infer from this event that the Defendant had a retaliatory animus.

179. Second, Defendant allowed Lt. Kretzmon's junior officers to be insubordinate to her and to defy direct orders.

180. Third, Defendant threatened Lt. Kretzman that Defendant was going to hold duplicate disciplinary hearings against Lt. Kretzman for incidents in which hearings had already been held and concluded.
181. Fourth, Defendant allowed employees to spread rumors about Lt. Kretzman that damaged her working relationships with fellow officers.
182. Fifth, Defendant permitted an employee to write "Fire Kretzman" in the lunch room.
183. Sixth, Defendant insufficiently investigated the incident in which someone wrote "Fire Kretzman" on the wall, and was unable to find employee who had written it.
184. Seventh, Defendant repeatedly made Lt. Kretzman work double duty.
185. Eighth, Defendant's superior officers, including but not limited to Chief Reardon, continued to repeatedly give her orders through her junior officers, in front of her. From these acts, a jury will properly infer that the Defendant was usurping Lt. Kretzman's authority and embarrassing her in front of her subordinate officers.
186. Ninth, Defendant's Chief Reardon excluded Lt. Kretzman from meetings about how her department would be run.
187. Tenth, Defendant reprimanded Lt. Kretzman for imaginary infractions.
188. Eleventh, Defendant refused to allow Lt. Kretzman to give input and information about how her department was run, instead allowing only Lt. Kretzman's junior officers to speak on the subjects.
189. Twelfth, Defendant failed to invite Lt. Kretzman to meetings in which all other supervisors and officers junior to Lt. Kretzman in her department met to discuss running the department. Instead, Defendant required Lt. Kretzman to work overtime and double duty.

190. Thirteenth, Chief Reardon ordered Lt. Kretzmon to sign off on an incident for which she was not present or on duty.
191. Fourteenth, Chief Reardon assigned Lt. Kretzmon to a project then, when Lt. Kretzmon handed it in, he pretended he had not assigned her the project and that she had done the wrong work.
192. Fifteenth, Chief Reardon ordered Lt. Kretzmon's staff to not speak to her, but to speak directly to him.
193. Sixteenth, Chief Reardon assigned an egregiously disparate amount of work to Lt. Kretzmon compared to the other Lieutenants. The unequal distribution of work was so severe that another officer senior to Lt. Kretzmon pointed out to Chief Reardon how unfair the work assignments were, yet the assignments did not change. The senior officer's statement will allow a jury to properly infer that the Defendant had a retaliatory animus toward Lt. Kretzmon.
194. Seventeenth, Defendant's Deputy Superintendent mocked Lt. Kretzmon for being sick from the stress of her workplace. A jury will properly infer from Lt. Kretzmon's supervisor's comment that the Defendant had a retaliatory animus toward Lt. Kretzmon.
195. Eighteenth, Defendant punished Lt. Kretzmon for reporting that another Lieutenant had spoken inappropriately and disrespectfully to her. As punishment, Defendant forced her to work overtime every day for approximately one month.
196. Nineteenth, Defendant again threatened Lt. Kretzmon that Defendant was going to hold more disciplinary hearings against Lt. Kretzmon for incidents in which hearings had already been held.

197. Twentieth, Defendant again forced Lt. Kretzmon to attend a specious disciplinary hearings for event in which she had acted strictly according to protocol.
198. Twenty-first, Chief Reardon switched Lt. Kretzmon's schedule, nullifying work she had developed and inconveniencing her.
199. Twenty-second, Defendant ordered Lt. Kretzmon to do menial tasks, such as secretarial work, housekeeping, and deputy escort work on top of her already full work schedule, despite the availability of other, junior staff and officers to do the work.
200. Twenty-third, Defendant continued to make Lt. Kretzmon work double duty.
201. Twenty-fourth, Defendant did not allow Lt. Kretzmon to attend training that would have helped her career.
202. Twenty-fifth, Defendant's Deputy Superintendent failed to inform Lt. Kretzmon that a meeting had been moved, causing Lt. Kretzmon to miss the first half of the meeting.
203. Twenty-sixth, Defendant's Deputy Superintendent then chose to give the meeting notes to a clerk rather than Lt. Kretzmon. Defendant so pervasively and obviously cut Lt. Kretzmon out of the circle of information and administration of her own department that multiple staff commented to Lt. Kretzmon about it. From Lt. Kretzmon's co-workers' comments a jury will properly infer that the Defendant had a retaliatory animus toward Lt. Kretzmon.
204. Twenty-seventh, Defendant created a think tank named "Reardon's Raiders" to streamline Lt. Kretzmon's department but did not allow her to participate, despite her experience, rank, and seniority.
205. Twenty-eighth, on the day one of the officers who abused an inmate was held to a disciplinary hearing, Defendant's employee decapitated a rat and placed it in Lt.

Kretzman's driveway. A subsequent Erie County Holding Center blog posting about Lt. Kretzman featured a dead rat and was titled with Lt. Kretzman's initials.

206. Twenty-ninth, though the Professional Standards Division felt that the incident might be witness tampering, Defendant failed to appropriately investigate the incident.

207. Thirtieth, when officers placed sexually obscene material in a work binder that Defendant looked through, Defendant failed to investigate or discipline the employees responsible.

208. Thirty-first, Chief Reardon required Lt. Kretzman to do projects at the last minute that required her to stay unexpectedly past her shift, while Chief Reardon simultaneously allowed the Lieutenant on duty to drink coffee and chat in Chief Reardon's office.

209. Thirty-second, Defendant currently allows a blog of the Erie County Holding Center to post a quiz as to whether or not Lt. Kretzman should be fired, and features a photo of a dead rat titled with her initials.

210. As a result of Defendant's retaliation, Lt. Kretzman experienced a severe deterioration of her health, fear, anxiety, humiliation, shame embarrassment, emotional pain and suffering, and loss of enjoyment of life.

#### **FOURTH CAUSE OF ACTION**

##### **Retaliation in Violation of New York State Civil Service Law §75-b**

211. Plaintiff repeats each and every allegation set forth herein in the paragraphs above as though fully set forth herein.

212. When a public employee discloses to a governmental body information regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, the public employer may not take disciplinary or other adverse personnel action against a public employee regarding the employee's employment because of the employee's disclosure. McKinney's Civil Service Law §75-b.

213. Lt. Kretzman is a public employee of the Erie County Sheriff's Department.

214. On January 19, 2010, Lt. Kretzman disclosed to Defendant's Professional Standards Division that she had discovered that three of the Defendant's employees had been violently abusing an inmate in an attempt to coerce the inmate into informing on other inmates.

215. The Defendant's Professional Standards Division is a governmental body.

216. Law enforcement officials' perpetrating repeated, unlawful, violent abuse of an inmate presents a substantial and specific danger to the public health and safety.

217. Defendant took at least 32 disciplinary or adverse personnel actions against Lt. Kretzman in response to her disclosing the unlawful abuse.

218. Lt. Kretzman reasserts the 32 disciplinary or adverse personnel actions described in paragraphs 176 through 207 above.

219. Though typically the employer is required to make a good faith effort to provide the appointing authority information and reasonable time to take appropriate action, the employee is waived from this obligation when there is imminent and serious danger to public health or safety. McKinney's Civil Service Law §75-b.

220. Because Lt. Kretzmon feared for the immediate safety of the inmate, and because Lt. Kretzmon did not know which, if any, of her superior officers, had condoned the abuse, Lt. Kretzmon acted to immediately protect the inmate by jumping her chain of command to report the abuse directly to the Defendant's Professional Standards Division.
221. As a result of Defendant's unlawful discipline and adverse personnel actions, Lt. Kretzmon experienced a severe deterioration of her health, fear, anxiety, humiliation, shame embarrassment, emotional pain and suffering, and loss of enjoyment of life.

#### **FIFTH CAUSE OF ACTION**

##### **Deprivation of Constitutional and Legal Rights, in Violation of 42 U.S.C.A. §1983**

222. Plaintiff repeats each and every allegation set forth herein in the paragraphs above as though fully set forth herein.
223. Any person who subjects or causes to be subjected, any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured. 42 U.S.C.A. §1983.
224. In bringing a §1983 claim, the Plaintiff must demonstrate that "(1) his speech was constitutionally protected, (2) he suffered an adverse employment decision, and (3) a causal connection exists between his speech and the adverse employment determination against him, so that it can be said that his speech was a motivating factor in the determination." *Morris v. Lindau*, 196 F.3d 102, 110 (2<sup>nd</sup> Cir. 1999).



225. As to the first element, “Plaintiff’s statements related to actions by others that involved the safety of the public or corruption within the police department” are protected speech.

*Moscowitz v. Coscette*, 3 Fed. Appx. 1, 4-5 (2<sup>nd</sup> Cir. 2001).

226. Lt. Kretzmon engaged in a variety of protected speech, as seen above.

227. Most specifically, on January 19, 2010, Lt. Kretzmon disclosed to Defendant’s

Professional Standards Division that she had discovered that three of the Defendant’s employees had been violently abusing an inmate in an attempt to coerce the inmate into informing on other inmates.

228. Lt. Kretzmon’s speech on January 19, 2010 was protected by the First Amendment, and was aimed to protect the Eighth and Fourteenth Amendments of the inmate being abused.

229. As to the second element, an adverse employment action includes “reprimand,” *Morris v.*

*Lindau*, 196 F.3d 102, 110 (2<sup>nd</sup> Cir. 1999), and damage to the employee’s “reputation, opportunity for advancement and earning potential,” *Bernheim v. Litt*, 79, F.3d 318, 325 (2<sup>nd</sup> Cir. 1996) (wherein the employer gave preferential assignments to other staff members, assigned the plaintiff to more onerous, less prestigious positions, required the plaintiff to perform the same amount of work in less time, assigned the plaintiff to less convenient work, criticized the plaintiff’s work, and wrongfully accused the plaintiff of committing work infractions).

230. Lt. Kretzmon reasserts the adverse employment actions outlined above in paragraphs 176 through 207. The more important of these adverse actions are delineated in the paragraphs below.

231. After Lt. Kretzmon reported that Defendant’s officers were abusing an inmate, the

Defendant reprimanded Lt. Kretzmon at least three times regarding an incident for which

the New York State Commission of Corrections found Lt. Kretzmon to have acted in accordance with Defendant's policies and procedures, and for which Defendant had already held a disciplinary hearing against Lt. Kretzmon.

232. Defendant allowed employees to spread rumors about Lt. Kretzmon that damaged her reputation and working relationships with fellow officers.
233. Defendant repeatedly made Lt. Kretzmon work double duty.
234. Defendant's superior officers, including but not limited to Chief Reardon, continued to repeatedly give her orders through her junior officers, in front of her. From these acts, a jury will properly infer that the Defendant was usurping Lt. Kretzmon's authority and embarrassing her in front of her subordinate officers.
235. Defendant's Chief Reardon excluded Lt. Kretzmon from meetings about how her department would be run.
236. Defendant reprimanded Lt. Kretzmon for imaginary infractions.
237. Defendant refused to allow Lt. Kretzmon to give input and information about how her department was run, instead allowing only Lt. Kretzmon's junior officers to speak on the subjects.
238. Defendant failed to invite Lt. Kretzmon to meetings in which all other supervisors and officers junior to Lt. Kretzmon in her department met to discuss running the department. Instead, Defendant required Lt. Kretzmon to work overtime and double duty.
239. Chief Reardon ordered Lt. Kretzmon to sign off on an incident for which she was not present or on duty.
240. Chief Reardon assigned Lt. Kretzmon to a project then, when Lt. Kretzmon handed it in, he pretended he had not assigned her the project and that she had done the wrong work.

241. Chief Reardon ordered Lt. Kretzmon's staff to not speak to her, but to speak directly to him.

242. Chief Reardon assigned an egregiously disparate amount of work to Lt. Kretzmon compared to the other Lieutenants. The unequal distribution of work was so severe that another officer senior to Lt. Kretzmon pointed out to Chief Reardon how unfair the work assignments were, yet the assignments did not change. The senior officer's statement will allow a jury to properly infer that the Defendant had a retaliatory animus toward Lt. Kretzmon.

243. After Lt. Kretzmon reported the inappropriate comments of her co-worker, Defendant took adverse action against Lt. Kretzmon, forcing her to work overtime every day for approximately one month.

244. Defendant again forced Lt. Kretzmon to attend a specious disciplinary hearings for event in which she had acted strictly according to protocol.

245. Chief Reardon switched Lt. Kretzmon's schedule, nullifying the work she had developed and inconveniencing her.

246. Defendant ordered Lt. Kretzmon to do menial tasks, such as secretarial work, housekeeping, and deputy escort work on top of her already full work schedule, despite the availability of other, junior staff and officers to do the work.

247. Defendant did not allow Lt. Kretzmon to attend training that would have helped her career.

248. Defendant's Deputy Superintendent failed to inform Lt. Kretzmon that a meeting had been moved, causing Lt. Kretzmon to miss the first half of the meeting. Defendant's Deputy Superintendent then chose to give the meeting notes to a clerk rather than Lt.

Kretzmon. Defendant so pervasively and obviously cut Lt. Kretzmon out of the circle of information and administration of her own department that multiple staff commented to Lt. Kretzmon about it. From Lt. Kretzmon's co-workers' comments a jury will properly infer that the Defendant had a retaliatory animus toward Lt. Kretzmon.

249. Defendant created a think tank named "Reardon's Raiders" to streamline Lt. Kretzmon's department but did not allow her to participate, despite her experience, rank, and seniority.

250. Defendant's employee decapitated a rat and placed it in Lt. Kretzmon's driveway. A subsequent Erie County Holding Center blog posting about Lt. Kretzmon featured a dead rat and was titled with Lt. Kretzmon's initials. Even though Defendant's Professional Standards Division felt that the incident might be witness tampering, Defendant failed to appropriately investigate the incident.

251. Chief Reardon required Lt. Kretzmon to do projects at the last minute that required her to stay unexpectedly past her shift, while Chief Reardon simultaneously allowed the Lieutenant on duty to drink coffee and chat in Chief Reardon's office.

252. As to the third element of Lt. Kretzmon's claim, the Defendant's Superintendent of the Prison made a statement that demonstrated the Defendant's retaliatory animus and there is temporal proximity between her protected speech and Defendant's subsequent adverse actions.

253. The same day that three officers were fired for abusing an inmate, an offense which Lt. Kretzmon had uncovered and reported, Defendant's Superintendent of the Prison made an announcement in front of her at a staff meeting. Defendant's Superintendent of the Prison stated to Lt. Kretzmon and her colleagues that they needed to "cover for each other." A jury will properly infer from this event that the Defendant had a retaliatory animus. For

the Superintendent of the Prison to say in front of Lieutenant Kretzmon and her colleagues, that they need to “cover for each other,” in the immediate context of three officers being fired because an officer, namely Lt. Kretzmon, had not covered for those officers shows a causal connection to the Defendant’s subsequent adverse actions.

254. Within one month of the Superintendent of the Prison saying that the Defendant’s employees need to “cover for each other,” Defendant took adverse actions against Lt. Kretzmon. Those adverse actions have continued to occur with frequency for the duration of Lt. Kretzmon’s employment.

255. As a result of Defendant’s adverse actions, Lt. Kretzmon experienced a severe deterioration of her health, fear, anxiety, humiliation, shame embarrassment, emotional pain and suffering, and loss of enjoyment of life.

**WHEREFORE**, Lt. Kretzmon respectfully requests this Court to enter an Order

- A. Directing Defendants to remove Chief Michael Reardon from Lt. Kretzmon’s chain of command;
- B. Awarding Lt. Kretzmon damages in an amount to be determined at trial;
- C. Awarding Lt. Kretzmon reimbursement for the loss of income and benefits, including but not limited to sick time accrued, vacation days lost, and overtime denied, and holiday time denied, she incurred as a result of the stress and anxiety caused by the retaliation she suffered.
- D. Directing Defendants pay all unreimbursed medical costs incurred by Lt. Kretzmon as a result of the stress and anxiety resulting from the retaliation she suffered and the

hostile working conditions she endured, including diagnostic analysis, treatment and therapy, and follow up therapy;

E. Directing Defendants pay Lt. Kretzmon the costs of this action, together with reasonable attorneys' fees and disbursements;

F. Directing Defendant's to pay punitive damages for their intentional violation of Lt. Kretzmon's rights.

G. Directing Lt. Kretzmon to have such other and further relief as this Court deems just and equitable.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) Fed. R. Civ. P., Plaintiff hereby demands a trial by jury for all issues triable of right by a jury in this case.

Dated: August 23, 2011

Respectfully submitted,  
Plaintiff Jacqueline Kretzmon  
by her Attorneys

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Lindy Korn, Esq.

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