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## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

### MEMORANDUM

**TO:** Robert Graber, Clerk, Erie County Legislature

**FROM:** Thomas F. Kirkpatrick, Jr., Acting First Assistant County Attorney *TFK/crj*

**DATE:** January 25, 2011

**RE:** Transmittal of New Claims Against Erie County

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Mr. Graber:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find ten (11) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Carlo Harris vs County of Erie, et al.  
Jeffrey Scheer vs County of Erie  
Demond Allen vs County of Erie  
Demond Allen vs County of Erie  
John Cole vs County of Erie  
Marie D. Calendra vs County of Erie, et al.  
Dashawn Davis vs Frank A. Sedita, III  
Nina M. Hardy vs Erie County Sheriff's Department  
Mark Kulczyk vs County of Erie, et al.  
Sue/Perior Concrete & Paving, Inc. vs Christopher C. Collins and Erie County  
Anthony S. Davis vs County of Erie, et al.

TFK/crj  
Attachments



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

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

File Name:	<i>Harris, Carlo vs County of Erie, Erie County Holding Center, Erie County Sheriff's Department, City of Buffalo and City of Buffalo Police Dept.</i>
Document Received:	Notice of Claim
Name of Claimant:	Carlo Harris 49 Mariemont Avenue Buffalo, New York 14220
Claimant's attorney:	Steven B. Bengart, Esq. Bengart & DeMarco, LLP 2655 Sheridan Drive Tonawanda, New York 14150

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow

Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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In the Matter of the Claim of  
CARLO HARRIS

NOTICE OF CLAIM

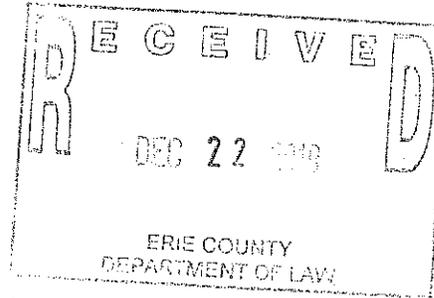
against

THE COUNTY OF ERIE,  
ERIE COUNTY HOLDING CENTER  
ERIE COUNTY SHERIFF'S DEPARTMENT

-and-

THE CITY OF BUFFALO,  
CITY OF BUFFALO POLICE DEPARTMENT

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2010 DEC 21 PM 4:32

**TO THE COUNTY CLERK OF THE COUNTY OF ERIE, STATE OF NEW YORK:**

**PLEASE TAKE NOTICE**, that Carlo Harris, the claimant herein, hereby makes claim against the County of Erie, State of New York for damages sustained by the claimant because of the negligence of the **COUNTY OF ERIE, ERIE COUNTY HOLDING CENTER, ERIE COUNTY SHERIFF'S DEPARTMENT, CITY OF BUFFALO, and BUFFALO CITY POLICE DEPARTMENT** as set forth by CARLO HARRIS.

The claimant resides at 49 Mariemont Avenue, Buffalo, New York 14220 County of Erie, State of New York.

The claimant's attorney is BENGART & DeMARCO, LLP, (Steven B. Bengart, Esq. of Counsel), with a business post-office address of 2655 Sheridan Drive, Tonawanda, New York 14150.

The injuries complained of were sustained on or about the morning of the 6<sup>th</sup> day of September, 2010.

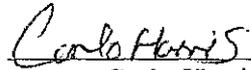
The injuries were sustained at the Erie County Holding Center located at 40 Delaware Avenue, Buffalo, New York, 14202, County of Erie, and State of New York.

The injuries and damages were sustained by reason of the wrongful, improper and negligent failure to provide the claimant with his prescribed medications and/or insure his receipt of appropriate medical treatment as the defendants knew or should have known the claiming was epileptic and required medication, and as a result the claimant experienced multiple seizures , a broken nose, requiring surgery and bruises and contusions on the face.

The nature and extent of the injury and damages to the claimants includes, upon information and

Upon information and belief the injuries sustained are permanent.

Dated: December 2, 2010  
Tonawanda, New York

  
\_\_\_\_\_  
Carlo Harris

Steven B. Bengart, Esq.  
Attorney for Claimant  
2655 Sheridan Drive  
Tonawanda, New York 14150

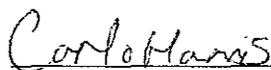
## CLIENT CERTIFICATION

I, CARLO HARRIS under penalty of perjury, that I have carefully read and reviewed the annexed Notice of Claim and that all information contained in that document is true and accurate in all respects to the best of my knowledge and understanding.

I FURTHER CERTIFY, under penalty of perjury, that neither my attorney, nor anyone acting on my attorney's behalf, was the source of any of the information contained in the annexed document; that I provided all of the information contained in the annexed document to my attorney; and that I understand that my attorney, in executing the Attorney Certification required by 22 NYCRR 202.16(e), is relying entirely upon the information provided by me and upon my Certification that all such information is true and accurate.

I FURTHER CERTIFY that the annexed document includes all information which I provided to my attorney which is relevant to such document and that my attorney has not deleted, omitted or excluded any such information.

Dated: 12/10/2010, 2010.

  
\_\_\_\_\_  
CARLO HARRIS

## ATTORNEY CERTIFICATION

I, STEVEN B. BENGART, ESQ., HEREBY CERTIFY, under penalty of perjury, that I have no actual knowledge that the substance of any statement of fact contained in the annexed document are false. This Certification is based solely and exclusively upon information provided by the client, and upon the Client's Certification to the undersigned attorney that such information is not false, and is not based upon any review, audit, examination, inquiry or investigation made by the undersigned attorney or anyone acting on behalf of said attorney.

PLEASE TAKE FURTHER NOTICE that this Certification is made by the attorney as an officer of the Court and is directed solely and exclusively to the Court in accordance with 22 NYCRR 202.16(e) and is expressly not directed or extended to the opposing party herein.

PLEASE TAKE FURTHER NOTICE that the opposing party may not and should not rely upon this Attorney Certification in assessing the truth or validity of the information contained in the annexed document. The credibility of this submission is no greater than the credibility of the client represented by the undersigned attorney and the opposing party should give this document no greater credence because it bears this Attorney Certification.

Dated: December 14, 2010.

  
\_\_\_\_\_  
STEVEN B. BENGART, ESQ.



# COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

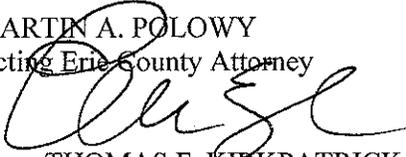
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Scheer, Jeffrey vs County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Jeffrey Scheer 40 Delaware Avenue Buffalo, New York 14202
Claimant's attorney:	Pro Se

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow  
Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

*Handwritten initials: JFR*

=====X

Claimant,

NOTICE OF CLAIM

- vs -

THE COUNTY OF ERIE,

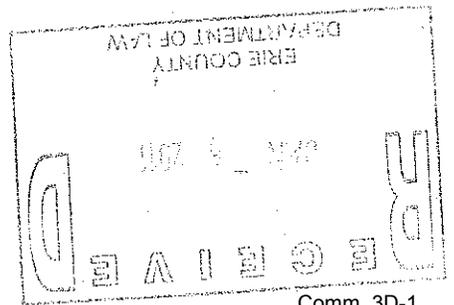
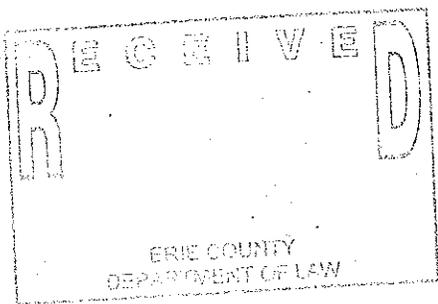
Defendant.

=====X

TO: COUNTY OF ERIE  
DEPARTMENT OF LAW  
69 DELAWARE AVENUE, SUITE 300  
BUFFALO, NEW YORK 14202

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

1. The name and post office address of the claimant is:
  
2. This claim is for damages sustained by the Claimant while he was an inmate at the Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York 14202-3999.



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

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

Jeffrey Scherer  
CLAIMANT

VERIFICATION

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

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

Jeffrey J. Schaar

Sworn to before me this 27  
day of December, 2010

Sylvia M. O'Neal  
Notary Public

SYLVIA M. O'NEAL  
COMMISSIONER OF DEEDS  
In and For the City of Buffalo, Erie County, NY  
My Commission Expires Dec. 31, 2010

Inmate Grievance Form

Grievance #

G-

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: JEFFREY SCER ICN# 110548 H/U# GUILTY  
02LH34

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

SCENE I HAVE BEEN HERE I HAVE BEEN TELLING THE MEDICAL STAFF THAT THEY ARE NOT GIVEN ME CLONOPIN LIKE ITS PRESCRIBE TO ME AND COURT ORDERED AS WELL. I HAVE TOLD ALL THE NURSE'S DOCTOR'S. THEY ARE GIVING ME MY DISPERDOL AND OTHER MEDS. I AM DONE TRYING TO TALK TO MEDICAL COUSE ITS NOT GETTING ME ANYWHERE

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

I WANT MY MEDICATION THATS PERSCRIBED TO ME AND TELLING THE NURSE'S IS NOT GETTING ME ANYWHERE I AM SUPPOSED TO GET CLONOPIN 1MG 2-OR 3 TIMES A DAY AS PRESCRIBED TO ME I ALSO HAVE THE COURT ORDER STATING I AM SUPPOSED TO HAVE IT

Grievant Signature: \_\_\_\_\_ Date/Time Submitted: \_\_\_\_\_

Receiving Staff Signature: \_\_\_\_\_ Date/Time Received: \_\_\_\_\_

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

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

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

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

Signature of INMATE: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Forwarded to Grievance Coordinator

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

Received by Grievant Coordinator

Signature of Grievance Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)



COPY  
THREE

INFORMAL COMPLAINT  
ON MEDICAL DEPARTMENT

MY NAME IS JEFFREY SCHEER

THIS INFORMAL COMPLAINT IS FIVE UNDER THE AMERICANS WITH DISABILITIES ACT. I HAVE NOT HAD MY PROPER MEDS SINCE I BEEN IN HERE MARCH 3TH 2010. I AM HAVING SOME PROBLEMS WITH THE MEDS. I AM GETTING AND NOW ITS BEEN 10 MONTHS IN JAIL WITHOUT MY PROPER MEDS. I HAVE A COURT ORDER. I HAVE BEEN SEEN BY A DOCTOR AT HOME. MY COURT ORDER IS, STATE OF NEW YORK SUPREME COURT, COUNTY OF ERIE, JUSTICE SHEILA A. DISTULLO SECURING ORDER C.P.L. ART. 510 THIS ORDER WAS 4.29-10. I HAVE TALK TO NURSE'S AND DOCTOR HERE. THIS IS MY MEDICATION AS PRESCRIBED RESPERDAL 1mg 2X ONE A DAY (2) CLONOPIN 1mg 2-OR 3X ONE A DAY. NOW WHAT THE MEDICAL DEPARTMENT IS GIVING ME IN THE COUNTY JAIL IS TRAMADOL 600mg 4 A DAY AT NIGHT WITH 1 RESPERDAL AT NIGHT ALSO. THIS MEDICATION IS MAKING ME LOSE VOICE, ITS MAKING ME DISPRESS, ITS MAKING ME SEE THING THAT ARE NOT REALY THERE I CANNOT SLEEP, IT MAKING MY HEAD HURT MY MOTHER HAVE THE DOCTOR NAME AND ADDRESS.

12-29-10



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

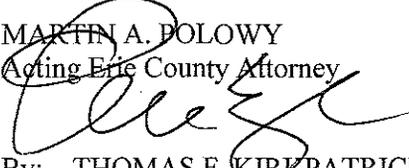
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Allen, Demond vs County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Demond Allen ICN 053206 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Pro Se

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow  
Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

TFK

=====X

Claimant,

NOTICE OF CLAIM

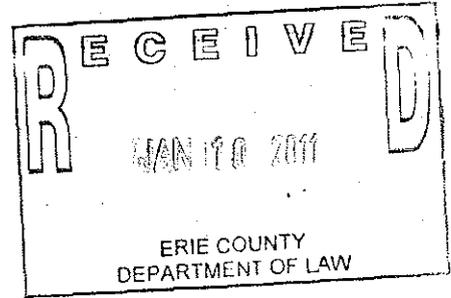
*Demond Allen*

- vs -

THE COUNTY OF ERIE,

Defendant.

=====X



TO: COUNTY OF ERIE  
DEPARTMENT OF LAW  
69 DELAWARE AVENUE, SUITE 300  
BUFFALO, NEW YORK 14202

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

1. The name and post office address of the claimant is:  
*40 DELAWARE AVENUE* *NY Fed 15051055*
2. This claim is for damages sustained by the Claimant while he was an inmate at the Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York 14202-3999.

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

*I went ELMC for my Anesthetics  
Was Suction they did nothing  
and my Back is in pain  
Real Bad they did nothing for  
me they are giving me little pain  
Med's for a major problem  
and it happen here*

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

  
CLAIMANT

VERIFICATION

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

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

Donald Allen

Sworn to before me this 12  
day of January 2011  
Sylvia M. O'Neal  
Notary Public

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



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

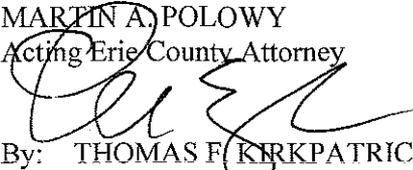
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Allen, Demond vs County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Demond Allen ICN 053206 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Pro Se

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow  
Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

TFK

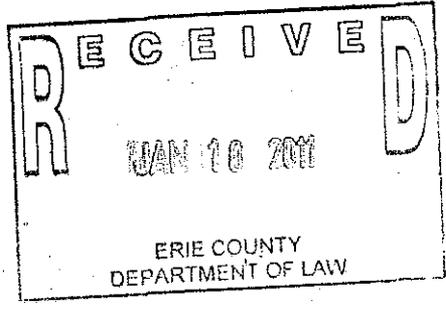
=====X

Claimant,

NOTICE OF CLAIM

*Demond L Allen*

- vs -



THE COUNTY OF ERIE,

Defendant.

-----X

TO: COUNTY OF ERIE  
DEPARTMENT OF LAW  
~~69 DELAWARE AVENUE, SUITE 300~~ *95 Franklin st Rm 1634*  
BUFFALO, NEW YORK 14202

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

1. The name and post office address of the claimant is:

*40 DELAWARE AVENUE  
ERIE COUNTY HOLDING CENTER*

2. This claim is for damages sustained by the Claimant while

he was an inmate at the Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York 14202-3999.

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

*I am ask for a Claimant*  
*I took Trazodone from Niagara County gave it to*  
*County Jail in the Fed ~~prison~~ prison*  
*The Doctor in OHIO gave me it.*  
*Now iam impotent I have problems.*  
*With my penis that i did not*  
*have before coming to*  
*Jail and Prison. They never gave me*  
*The Side affects*  
*I can not read ANY WAY*  
*Fed Number 15051058*

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

*Demond Allen*  
\_\_\_\_\_  
CLAIMANT

VERIFICATION

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

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

Diamond Allen

Sworn to before me this 6  
day of January 2011  
Sylvia M. O'Neal  
Notary Public

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



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

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

File Name:	<i>Cole, John vs County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	John Cole ICN# 1834 Erie County Holding Center 40 Delaware Avenue Buffalo, New York 14202
Claimant's attorney:	Pro Se

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow

Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

JFK

=====X

Claimant,

NOTICE OF CLAIM

- vs -

THE COUNTY OF ERIE,

Defendant.

=====X

ERIE COUNTY  
LAW DEPARTMENT  
95 FRANKLIN ST  
BUFFALO NY  
ZIP CODE 14202  
- 3921

TO: COUNTY OF ERIE  
DEPARTMENT OF LAW  
69 DELAWARE AVENUE, SUITE 300  
BUFFALO, NEW YORK 14202

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

1. The name and post office address of the claimant is:
  
2. This claim is for damages sustained by the Claimant while  
he was an inmate at the Erie County Holding Center, 40 Delaware Avenue,  
Buffalo, New York 14202-3999.

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

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

John Cote  
CLAIMANT

VERIFICATION

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

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

John Cole

Sworn to before me this 27  
day of December 2019

Sylvia M. O'Neal  
Notary Public

SYLVIA M. O'NEAL  
COMMISSIONER OF DEEDS  
in and For the City of Buffalo, Erie County, NY  
My Commission Expires Dec. 31, 2019



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

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

File Name:	<i>Calandra, Marie D. vs City of Buffalo, County of Erie and Niagara Frontier Transportation Authority</i>
Document Received:	Notice of Claim
Name of Claimant:	Marie D. Calandra 4545 Chestnut Ridge Road #121A Amherst, New York 14228
Claimant's attorney:	Leonard D. Zaccagnino, Esq. Shaw & Shaw, P.C. 4819 South Park Avenue Hamburg, New York 14075

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow  
Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

MARIE D. CALANDRA  
4545 Chestnut Ridge Road #121A  
Amherst, NY 14228

Claimant

-VS-

CITY OF BUFFALO  
Buffalo City Hall  
Buffalo, NY

COUNTY OF ERIE  
Erie County Hall  
Buffalo, NY

NIAGARA FRONTIER TRANSPORTATION  
AUTHORITY  
181 Ellicott Street  
Buffalo, NY

Respondents

---

**TO EACH OF THE RESPONDENTS:**

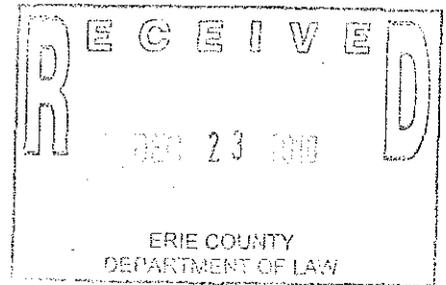
**PLEASE TAKE NOTICE**, that Marie D. Calandra claims damages against the respondents in accordance with the requirements of General Municipal Law Section 50-e, states as follows:

**FIRST:** The name and address of the Claimant is as follows:

Marie D. Calandra  
4545 Chestnut Ridge Road #121A  
Amherst, NY 14228

**SECOND:** The Claimant is represented herein by:

Shaw & Shaw, P.C.  
Leonard D. Zaccagnino, Esq., of counsel  
4819 South Park Avenue  
Hamburg, New York 14075



**NOTICE OF CLAIM**

**THIRD:** The claim of the claimant, **Marie D. Calandra**, is founded in negligence and is for personal injuries.

**FOURTH:** This is a claim for money damages for personal injuries sustained by the claimant against the respondents, when said claimant was caused to fall on property and premises and, more specifically, in and around the subway tracks and area of 478 Main Street, Buffalo, New York under the possession, control and ownership of the respondents.

**FIFTH:** The time when the claim arose and the time when injuries and damages herein alleged were sustained was December 7, 2010 at approximately 6:50 a.m.

**SIXTH:** The incident occurred in the area of the subway tracks and property located at 478 Main Street, Buffalo, New York.

**SEVENTH:** That the cause of action which forms the substance of this claim arose in the following manner:

On or about December 7, 2010, as the claimant was walking in the area of 478 Main Street, Buffalo, New York she was caused to fall, came into contact with the ground, and seriously injured herself.

**EIGHTH:** That the aforesaid incident and the injuries and damages resulting therefrom occurred by reason of the fault, neglect, and carelessness of the respondents, individually and jointly and severally, their agents, servants and/or employees, and that said respondents failed to properly, adequately, and safely maintain the aforesaid premises; failed to properly and adequately supervise and control the parking lot area on the date of the incident; carelessly and negligently designed the parking lot area on said premises where the incident occurred; failed to take the necessary steps and make the necessary observations, which, if taken or made, would have avoided the said incident; and in that the respondents, their agents, servants and/or employees, were otherwise careless and negligent.

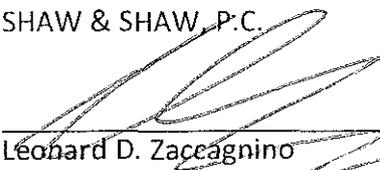
**NINTH:** By reason of the aforesaid, the claimant sustained severe, painful and permanent injuries in and about the head, neck, back, shoulders and other areas including, but not

limited to, a broken right arm; was otherwise rendered sick, sore, lame and disabled; was caused to incur and spend large sums of money for hospital care, surgical care, physicians' services, nursing care, X-rays and medical supplies, for which the exact amount of such expenses cannot be determined at the present time.

**WHEREFORE**, the claimant respectfully prays and requests that these claims, as set forth herein, be paid and allowed by the respondents.

DATED: December 15, 2010  
Buffalo, New York

SHAW & SHAW, P.C.



---

Leonard D. Zaccagnino  
Attorneys for Claimant  
4819 South Park Avenue  
Hamburg, New York 14075  
(716) 648-3020

VERIFICATION

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

**MARIE D. CALANDRA**, the undersigned, being duly sworn, deposes and says:

I am the Claimant in the foregoing proceeding and that I have read the foregoing Notice of Claim and know the contents thereof, and the same are true to my knowledge, except as to those matters stated therein to be alleged upon information and belief, and as to those matters, I believe them to be true.

Marie D Calandra  
Marie D. Calandra

Sworn to before me this

17th day of December 2010

[Signature]  
Notary Public

Leonard D. Zaccagnino  
Notary Public, State of New York  
Commission Expires Feb. 28, 2011  
Erie County



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

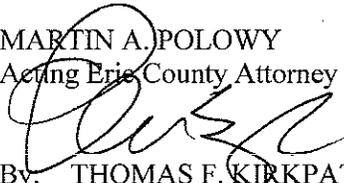
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Davis, Dashawn vs Frank A. Sedita, III, Erie County District Attorney</i>
Document Received:	Order to Show Cause
Name of Claimant:	Dashawn Davis ICN 10-B-2459 Elmira Correctional Facility P.O. Box 500 Elmira, New York 14902-0500
Claimant's attorney:	Pro Se

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow

Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of  
DASHAWN DAVIS, #10-B-2459,

AFFIDAVIT OF SERVICE

Petitioner,

-vs-

INDEX NO. I-2010-12414

FRANK A. SEDITA, III, ERIE COUNTY  
DISTRICT ATTORNEY,

Respondent.

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

Dashawn Davis, being duly sworn, deposes and says, that:

He is the Petitioner, Pro Se, in the above entitled action, and as such, hereby certifies that he has caused a true and complete copy of the Foregoing Order to Show Cause and Petition and all supporting papers upon which said Order was based to be served by U.S. Mail, on the dated Subscribed below, to be served upon the Respondent, Frank A. Sedita, III, Erie County District Attorney at 25 Delaware Avenue, Buffalo, New York 14202 and upon the Erie County Attorney, at both addresses as follows: 69 Delaware Avenue, Buffalo, New York 14202 and 95 Franklin Street, Rm 1634, Buffalo, New York 14202.

*Dashawn Davis*  
DASHAWN DAVIS #10-B-2459  
PETITIONER PRO SE

Sworn to before me on this

*4th* day of *Jan*, 2011.

*Ann Krotzer*  
Notary Public

ANN KROTZER  
Notary Public, State of New York  
Chemung County No. 01KR5065733

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

IN THE MATTER OF THE APPLICATION OF  
DASHAWN DAVIES, #10-B-2459

Petitioner,

-vs-

FRANK A. SEDITA, III, ERIE COUNTY  
DISTRICT ATTORNEY,

Respondent.

---

ORI# NY 014015J

ORDER TO  
SHOW CAUSE

RETURN ON  
PAPERS ONLY

Index No.  
I-2010-12414

SUPREME COURT, ERIE COUNTY

HON. PAULA L. FEROLETO, JUSTICE PRESIDING

APPEARANCES:

Petitioner, Pro Se  
DASHAWN DAVIES, #10-B-2459

This *ex parte* matter was referred to my attention at a Term of the Supreme Court,  
Erie County.

Upon the reading of the petition for relief pursuant to Article 78 of the Civil Practice  
Law and Rules, sworn to on November 30, 2010, with accompanying exhibits, and it appearing that  
the above referenced petitioner, DASHAWN DAVIES, a sentenced inmate, having made application  
pursuant to section 1101(f) of the CPLR, seeking poor person status and requesting a reduced filing  
fee,

LET RESPONDENT SHOW CAUSE at a Special Term of the Supreme Court to be held in and for the County of Erie on February 4, 2011 before the HON. JOHN MICHALSKI, Acting Justice of the Supreme Court, in Part 18 at 25 Delaware Avenue, Buffalo, New York, WHY the relief requested in the Petition should not be granted.

IT IS ORDERED that the production of petitioner or appearance by or on behalf of the respondent on said return date is not required, and the matter shall be decided on all papers submitted to the Court prior to said return date; and it is further

ORDERED that since the petitioner lacks sufficient means to pay the full filing fee ordinarily required in the prosecution of an action pursuant to Article 78 of the CPLR, the petitioner's application for reduced filing fee is hereby granted; and it is further

ORDERED that the petitioner will be permitted to pay a reduced filing fee of fifteen dollars (\$15.00) to proceed with this action. This fee shall be assessed against the petitioner as an outstanding obligation and collected by the facility in which the petitioner is lodged; and it is further

ORDERED that the petitioner is not required to make an initial payment of a portion of the reduced filing fee; and it is further

ORDERED that in the event the petitioner should receive an unfavorable decision, said petitioner is hereby granted poor person relief pursuant to Article 11 of the Civil Practice Law and Rules for the limited purpose of filing a Notice of Appeal in the Erie County Clerk's Office without paying the fee required by CPLR 8022(a); and it is further

**ORDERED** that a waiver of fees for service by publication, for stenographic transcripts, or for any other cost or fee related to this proceeding in this Court shall only be granted upon a separate application to the Court, on notice to the County Attorney of Erie County, pursuant to CPLR 1101, showing the need therefor; and it is further

**ORDERED** that service of a signed and executed copy of this Order to Show Cause, by ordinary First Class mail, upon the named respondent, Frank A. Sedita, III, Erie County District Attorney, on or before **January 7, 2011** be deemed adequate. In addition, the petitioner, on or before said date, shall similarly serve the Erie County Attorney, 95 Franklin Street, Room 1634, Buffalo, New York 14202; and it is further

**ORDERED** that it shall be the responsibility of the party seeking an extension of time to serve papers or seeking an adjournment of this matter to make such request for an extension of time or an adjournment to Acting Supreme Court Justice Michalski and any party receiving an adjournment shall notify the other party or parties of said adjourned date; and it is further

**ORDERED** that it is the petitioner's responsibility to:

(a) Serve a signed and executed copy of this Order to Show Cause, the petition and any supporting papers as authorized above or by personal service. The reduction of the filing fee herein does not authorize court personnel to provide photo-reproduction services, nor service of papers on behalf of a *pro se* litigant, as these services are not statutorily authorized under a grant of poor person relief (CPLR 1102).

(b) Submit the original proof of service to the chambers of the Hon. John Michalski, 25 Delaware Avenue-Third Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date; and it is further

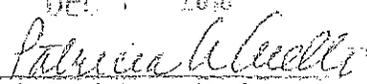
ORDERED that a copy of any answer or response shall be served upon the petitioner not less than five (5) days before the return date. The original of any such answer or response is to be delivered to the chambers of Acting Justice Michalski not less than three (3) days prior to said return date.

DATED: Buffalo, New York  
December 15, 2010

  
HON. PAULA L. FEROLETO  
Justice of the Supreme Court

GRANTED:

GRANTED

DEC 15 2010  
BY   
PATRICIA A. AIELLO  
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE : SPECIAL TERM

PETITION

In the Matter of the Application of  
DASHAWN DAVIES,

Petitioner,

FOR ADJUDGMENT PURSUANT TO ARTICLE 78  
of the Civil Practice Law and Rules

~~against~~

Index No. 2010-12414

FRANK A. SEDITA, III, ERIE  
COUNTY DISTRICT ATTORNEY,

Respondent.

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

DASHAWN DAVIS, respectfully alleges and shows, that:

This is a special proceeding brought pursuant to Article 78 of  
the Civil Practice Law and Rules in the nature of Mandamus,  
specifically Mandamus to Compel.

VENUE

Pursuant to 7804(b) and 506(b) of the Civil Practice Law and Rules,  
venue of this proceeding is Erie County where Respondent maintains  
his principle office.

PARTIES

Dashawn Davis (Petitioner), is a Prisoner of the State of New  
York under the custody of the Department of Correctional Services at

Elmira Correctional Facility, P.O. Box 500, Elmira, New York 14902.  
His Departmental Identification Number (DIN) is # 10-B-2459.

Frank A. Sedita, III (Respondent), is the Erie County District Attorney charged with effecting determinations relating to withholding and release of seized properties associated with criminal cases and remedying violations further associated with said properties.

#### STATEMENT OF FACTS

On September 20, 2009, Petitioner was arrested in the City of Buffalo, by City Police, and charged in two separate Felony Complaints, Numbered 09-1931-20 and 09-11785-18, with criminal offenses, inter alia, Possessing illicit drugs.

The arrest was based upon seizures, following a traffic stop, of alleged Controlled Substances, including Cell Phones, Paraphernalia and U.S. Currency, a total of which derive from two separate instances, \$2,051.00 and \$9,860.00.

The aforementioned seized items wherefore were photographed by Law Enforcement and the photographs of the items were subsequently introduced into a criminal Bench Trial of the case before the Honorable Russell P. Buscaglia, Supreme Court Justice of Erie County, under the cover of Erie County Indictment No. 09-2607, on or about June 17, 2010.

Respondent never suggested a potential Forfeiture of the <sup>Comm. 30-1</sup> seized <sub>Page 37 of 75</sub> items or complied with any of the Forfeiture rules to withhold said items.

Petitioner unsuccessfully and repeatedly sought by written correspondences addressed to Respondent, dated September 11, 2010 and October 29, 2010, release of his Property or the items aforementioned from said Respondent and particularly described said items as (4) Cell Phone Chargers, a Nokia Cricket Cell Phone with Tony Hawk Cover, a Verizon Casid Cell Phone, a Motorola Boost Moble Cell Phone, and his U.S. Currency derived from both instances aforementioned, totaling \$11,911.00. His correspondences were specifically directed by U.S. Mail, to District Attorney Sedita, III. His correspondences were not acknowledged in either event.

In support of his petition your Petitioner hereby attaches a true and complete copy of a criminal Discovery response provided by Respondent during the previous criminal proceedings that itemizes his property currently withheld from him improperly. see Exhibit " A "

#### CAUSE OF ACTION

Respondent has no inherent or Lawful Authority to withhold the Petitioner's Properties. see CPLR 1311; PL 480.10; see also People v. Jacobson, 60 A.D. 3d 1326 (4th Dept. 2009).

Petitioner has his Property improperly withheld from him in violation of CPLR 1311 and PL 480.10, governing Forfeiture which provides, in pertinent part (Underscored):

#### CPLR 1311 FORFEITURE ACTIONS

the substituted proceeds of a crime, an instrumentality of a crime, or the Real Property instrumentality of a crime or to recover a money judgment in an amount equivalent to the property of which constitutes the proceeds of a crime, or the Real Property instrumentality of a crime. A civil Action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the Real Property instrumentality of a crime provided, however, that a judgment of Forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (B) of subdivision three hereof shall be limited to the amount of the proceeds of the crime. Any action under this Article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in Personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. EXCEPT AS OTHERWISE PROVIDED SPECIFICALLY BY statute, the proceedings under this Article shall be governed by this chapter ...

The optimum words explicated by CPLR 1311 (1) may be properly inferred from the words " Except as otherwise specifically provided by Statute. These words create, and essentially allude to, specific statutory exceptions to the general rule, governing particularly " Felony Controlled Substance Offenses. " see PL 480.10 (Procedures).

Article 480 of the Penal Law authorize Respondent to present before a criminal Grand Jury any suggestion of a Forfeiture in which case a Grand Jury may return a Special Forfeiture Information, Id. In addition, the Prosecutor's discretion extends to alternative measures as a Superseding Forfeiture Information which, in either case, must be accomplished before a criminal judgment is made in the case, Id.

Objectively, all of the rudiments of the purposes of the Grand Jury is equally incorporated into Article 480, including the Notice Component. (see N.Y. Const. Art. I, Section 6; U.S. Const. Fourteenth Amendment).

In People v. Jacobson, 60 A.D. 3d 1326 (4th Dept. 2009), the State of New York Appellate Division, Fourth Department acknowledged Forfeiture of a criminal Defendant's Money or Property in the context of a direct appeal from a criminal judgment of conviction. In that case Comm. 3D-1  
Page 89 of 75

improperly of his Currency based on a violation of the Procedures set forth under Article 480 of the Penal Law. The District Attorney conceded a failure to comply with that Law and the court agreed, Id

The Jacobson court held that the prosecutor's failure to comply with the Forfeiture Procedure required vocation of the Forfeiture, Id 60 A.D. 3d 1326, supra. In addition, the appellate court acknowledged that even though the issue had not been preserved for review [CPL 470.05 (2)] that the failure to comply with PL. 480.10 is a non-waiveable defect in the mode of the procedure for which preservation is not required. (citing People v. Patterson, 38 N.Y. 2d 288, 295).

Here, the District Attorney or Respondent's introduction of only photographs of the items seized during the criminal trial, as opposed to the actual items themselves, and Respondents failure to comply with the Statutorily prescribed procedures governing Forfeiture, commands that Petitioner herein be given his property promptly.

WHEREFORE, it is respectfully prayed for an order compelling Respondent to provide Petitioner with his Property as set-forth herein.

DASHAWN DAVIS # 10-B-2459  
PETITIONER PRO SE

(VERIFICATION ATTACHED)

V-E-R-I-F-I-C-A-T-I-O-N

STATE OF NEW YORK)  
COUNTY OF CHEMUNG) ss:

Dashawn Davis, being duly sworn, deposes and says; I have prepared, read and reviewed the foregoing petition and the same is true to the best of my knowledge and belief.

*Dashawn Davis*  
DASHAWN DAVIS, # 10-B-2459  
PETITIONER PRO SE

Sworn to before me on this *2010*  
*30* day of *Nov*, ~~2010~~

*Ann Krotzer*  
\_\_\_\_\_  
Notary Public

ANN KROTZER  
Notary Public, State of New York  
Chemung County No. 01KR5065733  
Commission Expires Sept. 9, *2014*

EXHIBIT A



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

March 29, 2010

ROBERT CUTTING, ESQ.  
389 TREMONT STREET  
N. TONAWANDA, NY 14120

Re: People v. Dashawn Davis  
Indictment No. 02607-2009

Dear Mr. Cutting:

Enclosed please find the following property, provided pursuant to your timely Demand for Discovery, received March 23, 2010, at the District Attorney's Office:

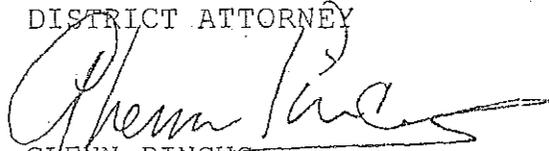
1. Property Report No. 302470, Seized Asset Receipt: \$9,860.00;
2. Property Report No. 302475, Seized Asset Receipt: \$2,051.00;
3. Property Report No. 302476, four cell phones;
4. Property Report No. 302477, Items 1-6: miscellaneous property seized at 249 Trenton Avenue; Item 7: keys recovered from defendant's person or vehicle, and used to enter 249 Trenton Avenue and to open lock box in kitchen;
5. Property Report No. 302501: Colt .357 magnum caliber revolver (with holster and five cartridges);
6. CPS Lab No. 09-06915, Report No. 1: cocaine;
7. CPS Lab No. 09-06915, Report No. 2: marihuana;
8. CPS Lab No. 09-06942, Report No. 1: gun swab;
9. CPS Lab No. 09-06942, Report No. 2: revolver operable;

ROBERT CUTTING, ESQ.  
March 29, 2010  
Page Two (2)

10. CPS Lab No. 09-06942, Report No. 3: hydrocodone;  
cocaine;
11. CPS Lab No. 09-06942, Report No. 4: gun swab;
12. CPS Lab No. 09-06942, Report No. 5: cocaine  
residue (digital scales); marihuana;
13. Photographs (photocopies) including exterior and  
interior of 249 Trenton Avenue, and evidence  
seized therefrom, including digital scales with  
cocaine residue, hydrocodone tablets, \$9,860 U.S.  
currency, loaded revolver, holster, 5 cartridges  
in cylinder, keys, miscellaneous paperwork,  
paraphernalia, name "Davis" on mailbox;
14. New York State Division of Parole "Certificate of  
Release to Parole Eligibility" for "Dashawn Davis  
06B2605" for date of release: 7/1/08.

Very truly yours,

FRANK A. SEDITA, III  
DISTRICT ATTORNEY



BY: ~~GLENN PINCUS~~  
Assistant District Attorney  
Narcotics Bureau

GP/do  
Enclosure

c: HON. RUSSELL P. BUSCAGLIA, J.S.C. (with enclosures)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE : SPECIAL TERM

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In the Matter of the Application of  
DASHAWN DAVIS,  
Petitioner,

APPLICATION TO PROCEED AS  
A POOR PERSON

FOR A JUDGMENT PURSUANT TO  
FLR 1101

~~against~~

Index No. 2010-12414

FRANK A. SEDITA, III, ERIE  
COUNTY DISTRICT ATTORNEY,

Respondent.

---

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

Dashawn Davis, being duly sworn, deposes and says, that:

He is the Pro Se Petitioner, in the above entitled action, and as such, makes this affidavit in support of his request for permission to Proceed herein as a Poor Person or Reduced Filing Fees (CPLR 1101).

That he is a Prisoner under the custody of the State of New York Department of Correctional Services and intends to challenge a determination of the Respondent withholding Personal Property in violation of the criminal Foffeiture Statute (PL 480.10).

That currently he receives no income, exclusive of his correctional facility wages.

That he owns the following valuable property (other than miscellaneous personal property): None

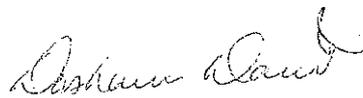
That he has no savings, property, assets or income other than as set forth herein.

That he is unable to pay the filing fee for this action or proceeding.

That no other person who is able to pay the total fee has a beneficial interest in the results of this action or proceeding.

That the facts of the case presented are described fully in my annexed Petition and Exhibits.

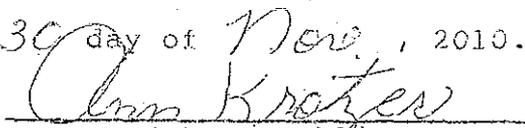
That I have not made any other request or prior application for permission to proceed as a Poor Person.



DASHAWN DAVIS # 10-B-2459.  
PETITIONER PRO SE

Sworn to before me on this

30 day of Nov., 2010.

  
Notary Public

ANN KROTZER

Notary Public, State of New York  
(SEE ATTACHED INMATE AUTHORIZATION)  
Chemung County No. 01KR5065733  
Commission Expires Sept. 9, 2014

INMATE AUTHORIZATION

TO CALCULATE AND DISBURSE INMATE TRUST FUNDS

I, Dashawn Davis, # 10-B-2459, having made an application to the Supreme Court of the State of New York, Erie County, for Permission to Proceed as a Poor Person and Reduced filing fees, in a Proceeding entitled Dashawn Davis v. Frank A. Sedita, III, Erie County District Attorney, authorize as follows:

I authorize and request the Commissioner of Corrections or any agent thereof for the Correctional Facility where I am incarcerated or of any other Correctional Facility where I have been incarcerated during six months prior to this application, to send to the clerk of the court a certified copy of my facility trust fund account statement or institutional equivalent for that period.

I further authorize the appropriate representative of the Commissioner of Corrections or the Correctional Facility where I am being held or have been held for the last six months, as authorize by cplr 1101(f)(2), to deduct those amounts as directed by the court, from my Correctional Facility Trust fund account or from any equivalent account.

I further understand that this authorization shall apply to any Correctional Facility that I may subsequently be transferred to.

I UNDERSTAND THAT THE ENTIRE FILING FEE AS DETERMINED AND ORDERED BY THE COURT WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY CORRECTIONAL FACILITY TRUST ACCOUNT OR ITS EQUIVALENT THEREOF EVEN IF MY PETITION IS DISMISSED OR DENIED.

Dated: 11-30-2010

*Dashawn Davis*

DASHAWN DAVIS #10-B-2459

ICAS SYSTEM  
NYS DEPT OF CORRECTIONS  
209-INMATE BALANCE SCREEN

NYSID: 8621750Q  
DOB: 07/03/88  
FULL NAME: DAVIS DASHAWN  
DIN: 10B2459

PHONE: ( 607 ) 734 3901 EXT: 3308  
FAX: ( 607 ) 734 3901 EXT: 3199  
CURRENT FACILITY: ELMIRA C & RC

SPENDABLE BALANCE: 95.20-

```

*****
*                ENCUMBRANCES                *
*                TOTAL:          325.00        *
*                COLLECTED:       160.03       *
*                OUTSTANDING:     164.97       *
*****

```

	SPENDABLE FOR LAST SIX MONTHS	TOTAL DEPOSITS FOR LAST SIX MONTHS
OLDEST	0.00	0.00
	0.00	0.00
	0.00	0.92
	4.14	8.50
∨	3.15	13.96
NEWEST	106.41	320.48

NEXT DIN:

ANOTHER LOOKUP - KEY NEXT DIN PRESS <ENTER> RETURN TO MENU PRESS <PF3>



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

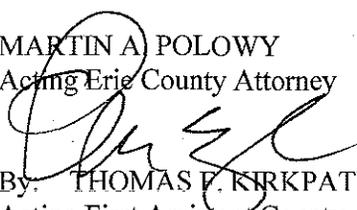
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Hardy, Nina M. vs Erie County Sheriff's Department</i>
Document Received:	Summons and Complaint
Name of Claimant:	Nina M. Hardy 5629 Kippen Road East Amherst, New York 14051
Claimant's attorney:	Lindy Korn 1904 Liberty Building Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow  
Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

UNITED STATES DISTRICT COURT

for the

ORIGINAL

NINA M HARDY

Plaintiff

v.

ERIE COUNTY SHERIFF'S DEPARTMENT

Defendant

Civil Action No. 10 CV 1011

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

ERIE COUNTY SHERIFF'S DEPARTMENT
10 DELAWARE AVENUE
BUFFALO, NY 14202

2010 DEC 22 PM 1:03

A lawsuit has been filed against you.

Within 20 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:

LINDY KORN, ESQ.
LAW OFFICE OF LINDY KORN
ELECTRIC TOWER
535 WASHINGTON ST., 9TH FL
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.

CLERK OF COURT

Date: DEC 16 2010

Michael J. Bolman
Signature of Clerk or Deputy Clerk

ORIGINAL  
RECEIVED AND FILED  
UNITED STATES DISTRICT COURT CLERK  
WESTERN DISTRICT OF NEW YORK

DEC 16 2010

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
Buffalo Division

BY: 

NINA M. HARDY,

Plaintiff,

Civil Action No.

v.

10 CV 1011-8

ERIE COUNTY SHERIFF'S DEPARTMENT

Defendant.

**PRELIMINARY STATEMENT**

1. This is an action for damages sustained by a citizen of the United States against police officers of the Erie County Sheriff's Department, who unlawfully and without probable cause detained, questioned and harassed the plaintiff on the basis of her race.

2. The action is against the Erie County Sheriff as the supervisory officer responsible for the conduct of the defendants and for the Sheriff's failure to take corrective action with respect to department personnel whose vicious propensities were notorious, to assure proper training and supervision of the personnel, or to implement meaningful procedures to discourage lawless official conduct, and against the County of Erie, New York State, as the employer of the police personnel, which is sued as a person under 42 U.S.C. § 1983.

**JURISDICTION AND VENUE**

3. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

4. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331, 1343(a)(3), (4).

5. This Court may also exercise supplemental jurisdiction over the plaintiff's state law claims that arise from the same facts and circumstances under 28 U.S.C. § 1367.

### THE PARTIES

6. The Plaintiff is an African American female currently residing at 5629 Kippen Road, East Amherst, New York 14051.

7. The Plaintiff is currently employed as a Sales Coordinator at Ingram Micro which has a facility located at 1759 Wherle Drive, Williamsville, New York. At all times relevant to the allegations of this complaint the Plaintiff was a citizen of the United States, and a resident of Erie County, New York.

8. On information and belief the Erie County Sherriff's Department is an agency of Erie County, New York, with a main office located at 10 Delaware Avenue, Buffalo, New York 14202.

9. At all times relevant to this action, defendant "John Doe" was a police officer employed by the Sherriff's Department. This defendant's name is currently unknown to and undiscoverable by plaintiff. The plaintiff will amend this complaint to state the true name of "John Doe" as soon as possible.

a. At all relevant times this defendant was acting as the agent, servant, and employee of the Defendant, County of Erie.

b. This Defendant Sherriff of Erie County is sued individually and in his official capacity.

10. At all times relevant to this action, the Defendant Timothy B. Howard was the duly elected Sheriff of the Erie County Sheriff's Department. In this capacity, the Sheriff was:

a. The commanding officer of Defendants "John Doe," and was responsible for their training, supervision, and conduct.

b. Responsible by law for enforcing the regulations of the Erie County Sheriff's Department and for ensuring that Erie County police personnel obey the laws of the State of New York and of the United States.

c. Acting as the agent, servant, and employee of the Defendant County of Erie. This defendant is sued individually and in his official capacity.

11. The Defendant County of Erie is a municipal corporation within the State of New York and, at all relevant times it employed the other defendants in this action.

12. At all relevant times and in all their actions, the Defendants were acting under color of law and pursuant to their authority as police personnel.

#### **FACTUAL ALLEGATIONS**

13. On May 7<sup>th</sup>, 2010 at approximately 2:45 p.m., while on a lunch break from her place of work, Ms. Nina Hardy, the Plaintiff, entered the Best Buy store located at 4401 Transit Road, Williamsville New York, 14221.

14. While the Plaintiff was in the Best Buy store the Plaintiff made arrangements to purchase an item and, while still in the Best Buy store, proceeded to print out what are known as "Reward Zone" coupons to help defray the cost of the item, a camera. The Plaintiff had earned these "Reward Zone" coupons through her continuous shopping at this store over a period of years.

15. At the time the Plaintiff had two coupon "accounts" with Best Buy. One of these accounts was a Silver Status premier account, which the Plaintiff merited due to the amount of income spent at Best Buy.

16. The Plaintiff was unable to complete the transaction at this time as she needed to return to her job. The Plaintiff asked that the camera be held for her until 5:30 when she would come back after work, with her printed out coupons, to complete the purchase of the camera and pick it up.

17. At approximately 5:35 p.m. on May 7, 2010, the Plaintiff returned to the Best Buy store, approached the register where she had been earlier, and asked for the camera. The sales representative at the register worked to complete the transaction for the Plaintiff, but had some technical difficulty in entering the Plaintiff's "Reward Zone," coupons and called the store manager over for assistance. When the store manager came to the register he did not immediately resolve the coupon entry issue. Rather he circled around the register observing the Plaintiff. A few moments later two Erie County Sheriffs deputies came into the store.

18. The Plaintiff completed her transaction, and lawfully proceeded to leave the store. She was stopped at the entrance to the store by the Erie County Sheriff's deputies who told the Plaintiff that she needed to come with them. At this point the Plaintiff was extremely bewildered as she had no idea what the deputies could possibly want with her. The Plaintiff asked the Sheriff's Deputies what it was they needed to speak with her about, but the deputies brushed her off saying that they would tell her once they got some information from her.

19. At this point all patrons and store staff in the vicinity of the front of the store began gawking at the Plaintiff as if she had committed a crime. The Plaintiff was now extremely embarrassed and humiliated as well as becoming frightened. The Sheriff's Deputies herded the Plaintiff into a side room in the store and detained and interrogated her for approximately an hour.

20. During this interrogation the Sheriff's deputies informed the Plaintiff that she had been at the Galleria shopping mall earlier in the same day and that she had committed some kind of theft there. The Sheriff's deputies attempted to extract a confession from the Plaintiff by attempting to convince her that she was the person from the Galleria Mall thefts. The Sheriff's deputies did this by describing the individual in question as a "black girl with blonde hair."

21. The Plaintiff's hair on this occasion was almost black. Nevertheless, the deputies insisted that the Plaintiff could have changed anything about her identity. At this point the Plaintiff offered to Sheriff's Deputies her identification, the receipt for the camera she had just purchased as well as her workplace phone number so they could call reliable witnesses who would verify her location during the time of the alleged thefts at the Galleria. The deputies refused this material and kept the Plaintiff in the room.

22. The Plaintiff now felt extremely fearful and was verging on panic.

23. The Sheriff's deputies also searched through the Plaintiff's personal belongings allegedly looking for a "stolen credit card" which was supposedly used at the Galleria earlier.

24. There were closed circuit surveillance cameras in the store. However, the Best Buy manager acted as if he was unsure of how to operate these devices and further refused to verify the Plaintiff's story by approaching the staff at the customer service desk who had been there when the Plaintiff came in earlier on this day. The Plaintiff was now very worried and anxious that she may be taken to jail.

25. The Sheriff's deputies were not pleased that they could find nothing incriminating on the Plaintiff. As they finally released her from the room, they informed the Plaintiff that a detective would be in contact with her. This statement made the Plaintiff

apprehensive about going home at all in fear that a law enforcement officer would be coming to her home and thus causing her embarrassment with her neighbors.

26. This episode was an ordeal that left the Plaintiff extremely demeaned, humiliated, mortified, fearful, outraged and emotionally distraught.

27. As a result of the action of the Sheriff's Deputies described above, The Plaintiff experienced humiliation, emotional distress, pain and suffering, and was otherwise damaged.

### **CLAIM FOR RELIEF**

28. The actions and omissions described above, engaged in under color of state authority by the defendants (including the Defendant County Eire, sued as a person and responsible because of its authorization, condonation, and ratification of the acts of its agents), deprived the plaintiff of rights secured to hereby the Constitution of the United States, including, but not limited to, the plaintiff's:

- a. *Fourth Amendment* right to be free from unlawful seizure of her person;
- b. *Fifth and Fourteenth Amendment* rights to due process of law, including the right to be free from unjustified and excessive force utilized by police.

### **PRAYER FOR RELIEF**

Plaintiff demands the following relief:

- A. Compensatory damages in the amount of \$200,000.00.
- B. Punitive damages in the amount of \$1,000,000.00.
- C. Attorney's fees pursuant to 42 U.S.C. § 1988.
- D. An award of plaintiff's costs of suit.
- E. Such other relief that this Honorable Court she deem just and appropriate under the circumstances.

Dated: December 16, 2010

Respectfully Submitted,  
Plaintiff  
By Her Attorneys



LINDY KORN, ESQ. (WD12474)  
Attorney for Plaintiff  
Electric Tower  
535 Washington St., 9<sup>th</sup> Floor  
Buffalo, New York 14203  
716-856-5676  
716-507-8475(*facsimile*)  
E-Mail: lkk75atty@aol.com



CHARLES L. MILLER, II, ESQ. (WD16579)  
Attorney for Plaintiff  
Electric Tower  
535 Washington St., 9<sup>th</sup> Floor  
Buffalo, New York 14203  
716-856-5676; Direct 716-207-0125  
716-507-8475(*facsimile*)  
E-mail: clmiller2atty@aol.com



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

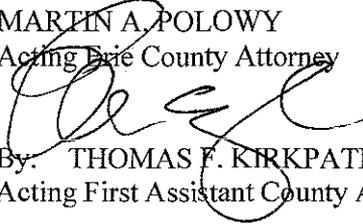
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kulczyk, Mark vs County of Erie and Erie County Re-Entry Task Force</i>
Document Received:	Notice of Claim
Name of Claimant:	Mark Kulczyk 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Andrews, Bernstein & Maranto, LLP 69 Delaware Avenue, Suite 1200 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow

Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

STATE OF NEW YORK  
SUPREME COURT : ERIE COUNTY

---

MARK KULCZYK

Claimant,

vs.

NOTICE OF CLAIM

COUNTY OF ERIE  
95 Franklin Street  
Buffalo, New York 14202

ERIE COUNTY RE-ENTRY TASK FORCE  
95 Franklin Street  
Buffalo, New York 14202

Respondents.

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**PLEASE TAKE NOTICE**, that the Claimant, MARK KULCZYK, hereby intends to file a claim against the COUNTY OF ERIE and the ERIE COUNTY RE-ENTRY TASK FORCE, and in support of said claim states the following:

1. The Post Office address of the Claimant is currently 11581 Walden Avenue, Alden, New York, 14004 as he is incarcerated.
2. The attorneys for the Claimant are Andrews, Bernstein & Maranto, LLP, 69 Delaware Avenue, Suite 1200, Buffalo, New York 14202, Telephone (716) 842-2200.
3. The Claim arose as follows: In October of 2010, exact date currently unknown, MARK KULCZYK was laying on the top bed of a bunk bed at the Grace House, located at 1932 Bailey Avenue, Buffalo, New York, 14211, when said bed gave out, and crashed to the floor. Mr. Kulczyk was placed at the Grace House by the Erie County Re-Entry Task Force.
4. This incident was caused by the negligence, carelessness, and recklessness of the COUNTY OF ERIE and/or the ERIE COUNTY RE-ENTRY TASK FORCE, its agents, servants and/or employees as follows:

- a.) The Respondents, their agents, servants, and/or employees were negligent in failing to maintain the premises and the property contained within the premises in a reasonable and safe condition;
- b.) The Respondents, their agents, servants, and/or employees were negligent in creating and/or maintaining a dangerous and hazardous condition on the premises;
- c.) The Respondents, their agents, servants, and/or employees were negligent in failing to remedy the aforesaid condition;
- d.) The Respondents, their agents, servants, and/or employees were negligent in failing to warn the plaintiff of the dangerous and hazardous conditions in the subject of the premises;
- e.) The Respondents, their agents, servants, and/or employees were negligent in failing to inspect the bunk bed;
- f.) The Respondents, their agents, servants, and/or employees or their agents were negligent in failing to take proper measures to correct the dangerous condition in the bunk bed;
- g.) The Respondents, their agents, servants, and/or employees were negligent in failing to observe the dangerous condition in the subject area; and
- h.) The Respondents were otherwise negligent.

5. The claim for MARK KULCZYK is for personal injuries, conscious physical and emotional pain and suffering, medical expenses, as well as consequential damages.

6. That by reason of the foregoing, Claimant MARK KULCZYK has been caused to sustain, among other things, serious, painful and permanent injuries in and about his

head, neck, and back; in that he is incapacitated from his duties and responsibilities. Claimant, MARK KULCZYK, also suffered other injuries and complications as yet undetermined as a result of this accident and, and by reason of the same, Claimant sustained damages in an amount which cannot be reasonably calculated at this time.

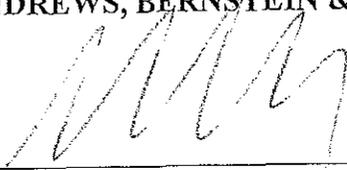
7. By virtue of the negligence, carelessness, and recklessness of the COUNTY OF ERIE and/or the ERIE COUNTY RE-ENTRY TASK FORCE, Claimant has also incurred hospital and medical expenses, as well as other necessary related expenses, the amount of which is undetermined to date.

**WHEREFORE**, Claimant demands relief in judgment on his behalf, and to receive damages on the allegations previously stated herein in an amount as may be just and proper based on the circumstances, together with the costs and disbursements of this action against the named Respondents; and for such other and further relief as to this Court may seem just and proper.

Dated: Buffalo, New York  
December 28, 2010

**ANDREWS, BERNSTEIN & MARANTO, LLP**

By: \_\_\_\_\_

  
Robert J. Maranto, Jr.  
*Attorneys for Claimant*  
69 Delaware Avenue, Suite 1200  
Buffalo, New York 14202  
(716) 842-2200



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

January 24, 2011

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

Dear Mr. Graber:

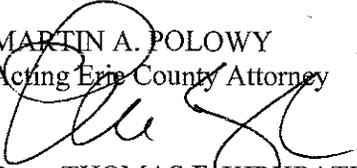
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Sue/Perior Concrete &amp; Paving, Inc. vs Christopher C. Collins and Erie County</i>
Document Received:	Notice of Claim
Name of Claimant:	Sue/Perior Concrete & Paving, Inc. 1500 Union Road, Suite 201 West Seneca, New York 14227
Claimant's attorney:	Gregory P. Photiadis, Esq. Duke, Holzman, Photiadis & Gresens LLP 1800 Main Place Tower 350 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow

Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

In the matter of the Claim of

**SUE/PERIOR CONCRETE & PAVING, INC.,**

**Claimant**

against

**CHRISTOPHER C. COLLINS and ERIE COUNTY,**

**Respondents.**

**VERIFIED**  
**NOTICE OF CLAIM**

TO: ERIE COUNTY ATTORNEY  
95 Franklin Street - Rm 1634  
Buffalo, New York 14202

PLEASE TAKE NOTICE, that the Claimant, SUE/PERIOR CONCRETE & PAVING, INC. ("SUE/PERIOR"), hereby makes claim and demand against ERIE COUNTY and Erie County Executive CHRISTOPHER C. COLLINS (the "COUNTY EXECUTIVE") and states upon information and belief as follows:

1. **The name and post-office address of the claimant:** Claimant SUE/PERIOR CONCRETE & PAVING, INC. is a corporation organized under the laws of the state of New York with a post-office address of 1500 Union Road, Suite 201, West Seneca, New York, 14227.
2. **The name and post-office address of the attorneys for claimant:** The attorneys for SUE/PERIOR are Duke, Holzman, Photiadis & Gresens LLP, Gregory P. Photiadis, Esq., of counsel, with a post-office address of 1800 Main Place Tower, 350 Main Street, Buffalo, New York, 14202.

3. **The nature of the claim:** Claimant SUE/PERIOR makes claim for damages sustained by the tortious and unlawful actions of ERIE COUNTY and the COUNTY EXECUTIVE. The COUNTY EXECUTIVE has threatened and extorted SUE/PERIOR, demanding SUE/PERIOR install new storm sewer culvert in the Town of West Seneca, and if SUE/PERIOR failed to do so, the COUNTY EXECUTIVE would “blackball” SUE/PERIOR from any work in ERIE COUNTY. Acting under coercion and duress, SUE/PERIOR was forced to complete the project and has been denied reimbursement for its costs and expenses in performance of the work. The actions of the COUNTY EXECUTIVE and officials and agents of ERIE COUNTY as herein described are unlawful, and form the basis of SUE/PERIOR’s claims for fraud, tortious interference with a contractual relationship, prima facie tort, violation of New York General Business Law §349, violation of 42 U.S.C. §1983, breach of contract, quantum meruit, and unjust enrichment.

4. **The time when, the place where, and the manner in which the claims arose:**

A meeting was held on October 15, 2010 between employees of SUE/PERIOR and officials of the Town of West Seneca and officials of ERIE COUNTY, including the COUNTY EXECUTIVE, Commissioner of Public Works Gerard J. Sentz, and Deputy Commissioner of Highways Gary M. Zawodzinski. The purpose of the meeting was to discuss ERIE COUNTY’s storm sewers beneath East and West Road in West Seneca, which were badly deteriorated and silted in. At this meeting, the COUNTY EXECUTIVE falsely stated that SUE/PERIOR had damaged the sewer culverts during prior work it had done on the waterlines beneath East and West Road, despite evidence that this was not true. The COUNTY EXECUTIVE threatened that SUE/PERIOR must immediately provide the labor and equipment to install new sewer culverts, and if SUE/PERIOR failed to do so, the COUNTY EXECUTIVE threatened “I’ll blackball your company so fast you’ll never work in this county again.” The COUNTY EXECUTIVE repeated

this extortion, saying, "I'll blackball your company to the end of the earth so fast your head will spin."

SUE/PERIOR and its affiliate Man O' Trees Inc. are site and general contractors. A substantial portion of their business comes from within Erie County. Faced with the prospect of the COUNTY EXECUTIVE abusing the power of his office to prevent SUE/PERIOR from getting *any* work in Erie County, SUE/PERIOR was forced to agree to the threats. Such extortion is an unconscionable abuse of the power of the county executive office, and evidences a callous disregard for the rule of law and due process of law.<sup>1</sup> Under protest and duress, SUE/PERIOR was compelled to sign a letter agreement with West Seneca and ERIE COUNTY to complete the work.

SUE/PERIOR completed the work in November of 2010. When SUE/PERIOR excavated East and West Road and exposed the sewer culvert, it was demonstrated that the deteriorated condition of the culverts was the result of the wear of time and neglect of ERIE COUNTY, and not anything SUE/PERIOR had done during its prior work on the waterlines. The sewer culverts were decrepit, deteriorated, and badly silted in. In some sections, there was no culvert at all. In other sections, hot water tanks, rather than culvert piping, had been used. ERIE COUNTY officials were presented with this manifest evidence that the poor condition of the culverts was the result of its own neglect over time, and not any actions of SUE/PERIOR.

In fact, ERIE COUNTY officials were present during the excavation and replacement of the sewer culvert and had actual knowledge of the true condition of the culvert. Deputy Commissioner Zawodzinski was present at times, as was Jim Wade from the Erie County Department of Public Works. When asked by SUE/PERIOR employees why SUE/PERIOR was installing new sewer culvert when there was no damage caused by their prior waterline

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<sup>1</sup> The COUNTY EXECUTIVE has engaged in similar tactics with other local businesses, threatening to blackball them.

installation, Wade responded that the situation was "like the perfect storm." He then threatened the employees that he would have the COUNTY EXECUTIVE call their boss again if there was a problem. During the excavation and installation, West Seneca Engineer Mark Hummell admitted to SUE/PERIOR employees that SUE/PERIOR was not the cause of the damage to the East and West Road storm sewers. Subsequent to completion of the installation, Deputy Commissioner Zawodzinski admitted to SUE/PERIOR's project manager that SUE/PERIOR was not responsible for the drainage problems, but the COUNTY EXECUTIVE nonetheless refused to authorize reimbursement.

Prior to the October 15, 2010 meeting, ERIE COUNTY was provided with evidence that the condition of the storm sewers was the result of deterioration and the build-up of silt over time. In early October, 2010, West Seneca and ERIE COUNTY officials met at East and West Road to discuss the state of the county's storm drains. The town used one of its sewer cleaning trucks to attempt to flush the storm drains. Four blockages were found. These blockages were evidence that the storm sewers were silted in.

The fair and reasonable value of SUE/PERIOR's services is \$49,561.16. SUE/PERIOR has demanded payment for its services in this amount from ERIE COUNTY. ERIE COUNTY has refused to make payment, despite the uncontroverted evidence that SUE/PERIOR was in no way liable for the replacement of the sewer culvert.

Prior to the replacement of the sewer culvert, SUE/PERIOR completed a contract with the Town of West Seneca for the replacement of the waterlines along East and West Road. During this work in 2009, ERIE COUNTY initially sought to replace its sewer culverts, soliciting a bid for the job from SUE/PERIOR. However, the county became nonresponsive and failed to follow-through. SUE/PERIOR did replace a 410 foot section of very badly deteriorated culvert at the direction of the Town of West Seneca. The town reimbursed SUE/PERIOR for this work. It

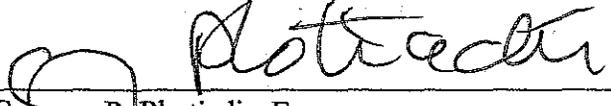
was only after SUE/PERIOR was finished with its waterline work that ERIE COUNTY returned to the issue, fabricating the accusation that the deteriorated and silted condition of the storm drains was somehow the fault of SUE/PERIOR.

5. **The items of damage or injuries claimed to be sustained:** As a result of the actions of respondents ERIE COUNTY and COLLINS as herein described, claimant SUE/PERIOR has been damaged by, among other things, the value of services for the work SUE/PERIOR completed on East and West Road, to wit, \$49,561.16; together with additional damages, costs, and legal fees as permitted by GBL §349 and 42 USC §1983; impairment to its contractual and business relationship with West Seneca; the loss of the amount ERIE COUNTY has benefited from and been unjustly enriched by the work on East and West Road; the infringement and deprivation of SUE/PERIOR's constitutional rights, privileges, and immunities; and in the expenditures SUE/PERIOR has made based on the false, misleading, and deceptive representations and statements of respondents.

YOU WILL TAKE FURTHER NOTICE that claimant SUE/PERIOR demands payment of the claim, and, unless the claim is paid within a reasonable time, limited for compliance by the applicable statutes, it is the intention of claimant SUE/PERIOR to commence suit against ERIE COUNTY and CHRISTOPHER C. COLLINS.

DATED: January 10, 2011  
Buffalo, New York

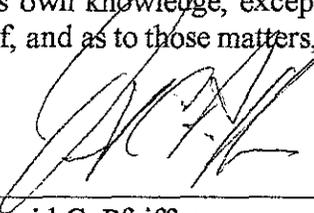
DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By:   
\_\_\_\_\_  
Gregory P. Photiadis, Esq.  
*Attorneys for Plaintiff*  
1800 Main Place Tower  
350 Main Street  
Buffalo, New York 14202  
(716) 855-1111

VERIFICATION

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

**David C. Pfeiffer**, being duly sworn, deposes and says: that deponent is a named claimant in the within Notice of Claim; that deponent has read the foregoing and knows the contents thereof; that the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, deponent believes it to be true.

  
\_\_\_\_\_  
David C. Pfeiffer  
Director, Sue/Perior Concrete & Paving, Inc.  
1500 Union Road, Suite 201  
West Seneca, New York, 14224

Sworn to before me this  
10th day of January, 2011

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

Kimberly A. Roth  
Notary Public, State of New York  
Qualified in Cattaraugus County  
My Commission Expires May 21, 20 11



## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE  
DEPARTMENT OF LAW

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

January 24, 2011

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

Dear Mr. Graber:

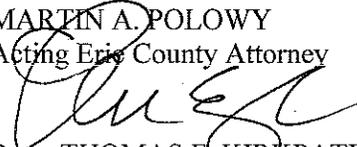
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Davis, Anthony S. vs County of Erie, Erie County Sheriff's Dept., Timothy B. Howard, Erie County Sheriff, et al</i>
Document Received:	Notice of Claim
Name of Claimant:	Anthony S. Davis 2057 Mt. Hope Road Sanborn, New York 14132
Claimant's attorney:	John F. Maxwell Maxwell Murphy, LLC - 1230 Delaware Avenue Buffalo, New York 14209

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY  
Acting Erie County Attorney

  
By: THOMAS F. KIRKPATRICK, JR.  
Acting First Assistant County Attorney

TFK/mow

Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

In the Matter of the Claim of

ANTHONY S. DAVIS  
2057 Mt. Hope Road  
Sanborn, New York 14132

*Claimant,*

**NOTICE OF CLAIM**

vs.

COUNTY OF ERIE;  
ERIE COUNTY SHERIFF'S DEPARTMENT;  
TIMOTHY B. HOWARD, ERIE COUNTY SHERIFF;  
MARK WIPPERMAN, ERIE COUNTY  
UNDERSHERIFF;  
ROBERT KOCH, SUPERINTENDENT,  
ADMINISTRATIVE SERVICES DIVISION,  
JAIL MANAGEMENT DIVISION;  
DONALD J. LIVINGSTON, ACTING  
SUPERINTENDENT FOR ERIE  
COUNTY CORRECTIONAL FACILITY,

*Respondents.*

---

**TO:** Martin A. Polowy, Esq.  
Acting Erie County Attorney  
95 Franklin Street, Room 1634  
Buffalo, New York 14202

Robert Koch, Superintendent  
Administrative Services Division  
Jail Management Division  
40 Delaware Avenue  
Buffalo, New York 14202

Timothy B. Howard,  
Erie County Sheriff  
10 Delaware Avenue  
Buffalo, New York 14202

Mark Wipperman,  
Erie County Undersheriff  
10 Delaware Avenue  
Buffalo, New York 14202

Donald J. Livingston,  
Acting Superintendent for  
Erie County Correctional Facility  
11581 Walden Avenue  
Alden, New York 14004

**PLEASE TAKE NOTICE**, that the Claimant, Anthony S. Davis, claims and demands the following against the Respondents COUNTY OF ERIE; ERIE COUNTY SHERIFF'S DEPARTMENT; TIMOTHY B. HOWARD, ERIE COUNTY SHERIFF; MARK WIPPERMAN, ERIE COUNTY UNDERSHERIFF; ROBERT KOCH, SUPERINTENDENT, ADMINISTRATIVE SERVICES DIVISION, JAIL MANAGEMENT DIVISION; DONALD J. LIVINGSTON, ACTING SUPERINTENDENT FOR ERIE COUNTY CORRECTIONAL FACILITY in accordance with the requirements of the New York General Municipal Law §50-e:

1. The name and post office address of the Claimant is:

ANTHONY S. DAVIS  
2057 Mt. Hope Road  
Sanborn, New York 14132

The name and post office address of the Claimant's attorney is:

JOHN F. MAXWELL, ESQ.  
MAXWELL MURPHY, LLC  
1230 Delaware Avenue  
Buffalo, New York 14209

2. The Claim of Anthony S. Davis is for personal injuries sustained through the negligence and violations of the Labor Law of the State of New York, by the Respondents, their agents, employees and contractors.

3. The time when and place where this Claim arose are as follows: On November 1, 2010, at approximately 4:30 p.m., at the construction project located at Erie County Correctional Facility in the Town of Alden and State of New York.

4. Claimant Anthony S. Davis was working as a union roofer for Grove Roofing with offices located at 131 Reading Avenue, Buffalo, New York 14220, who, upon information and

belief, had contracted with the Respondents, their agents and contractors to perform construction activities at the Erie County Correctional Facility in Alden, New York. Upon information and belief, the structures and property upon which such construction work was being performed are owned by the Respondents.

5. Upon information and belief, the Respondents were the general contractors of the construction site at the Erie County Correctional Facility, New York on November 1, 2010

6. At approximately 4:30 p.m. on November 1, 2010, the Claimant Anthony S. Davis was performing construction work when he was caused to slip, miss a rung and fall approximately 12 to 16 feet from an extension ladder which he was descending to the ground below. Claimant's fall was caused by the Respondents' failure to provide and place proper safety devices to prevent him from falling from his elevated work surface or from striking the ground below as well as Respondents' failure to properly construct and guard elevated work surfaces upon which Claimant was required to work.

7. Claimant Anthony S. Davis was caused to suffer serious and permanent injuries to his left foot including a highly comminuted fracture of the left calcaneus with flattening of Bohler's angle, as well as injuries to his low back.

8. The injuries to Claimant Anthony S. Davis have resulted and will result in past and future medical expenses; past and future loss of earnings, fringe benefits, and unemployment compensation; reduced earning capacity; past and future pain and suffering and loss of enjoyment of life; past and future loss of household services; as well as other damages.

9. Claimant Anthony S. Davis was caused to suffer the above-mentioned injuries and damages due to the negligence and unlawful behavior of the Respondents, their agents, employees and contractors in negligently failing to provide Claimant with a safe place to work and in failing to comply with §§200, 241(6) and 240(1) of the New York State Labor Law when the Claimant Anthony S. Davis was caused to slip, miss a rung and fall from a ladder while in the performance of his duties as a union roofer in the employ of Grove Roofing, as a result of the Respondents' failure to provide and place proper safety devices to prevent him from injury, as well as its failure to comply with the rules and regulations promulgated under the New York State Labor Laws.

10. The injuries of the Claimant Anthony S. Davis have resulted and will result in past and future medical expenses including costs for hospitalization, surgery, medications, physical therapy, rehabilitation, custodial care, diagnostic tests, radiological tests, follow-up medical examinations; as well as medical and home equipment and devices; past and future loss of earnings, fringe benefits, Social Security benefits and unemployment compensation; reduced earning capacity; past and future pain and suffering and loss of enjoyment of life; past and future loss of household services.

**WHEREFORE**, the Claimant, ANTHONY S. DAVIS , hereby claims and demands from Respondents COUNTY OF ERIE; ERIE COUNTY SHERIFF'S DEPARTMENT; TIMOTHY B. HOWARD, ERIE COUNTY SHERIFF; MARK WIPPERMAN, ERIE COUNTY UNDERSHERIFF; ROBERT KOCH, SUPERINTENDENT, ADMINISTRATIVE SERVICES DIVISION, JAIL MANAGEMENT DIVISION; and DONALD J. LIVINGSTON, ACTING SUPERINTENDENT FOR ERIE COUNTY CORRECTIONAL FACILITY compensation for the

damages sustained by reason of the wrongful, unlawful, negligent and careless acts and omissions of the Respondents, their agents, servants and employees.

DATED: January 7, 2011  
Buffalo, New York



JOHN F. MAXWELL, ESQ.  
MAXWELL MURPHY, LLC  
*Attorneys for Claimant*  
1230 Delaware Avenue  
Buffalo, New York 14209  
(716) 885-1300

**VERIFICATION**

ANTHONY S. DAVIS, being duly sworn, deposes and says: I am the Claimant above named; I have read the foregoing Notice of Claim and know its contents; the same is true to my own knowledge, except as to those matters therein stated to be alleged on information and belief, and, as to those matters, I believe it to be true.

*Anthony S. Davis*  
\_\_\_\_\_  
ANTHONY S. DAVIS

Subscribed and sworn to before me  
this 10 day of January 2011.

*Teresa McClellan*  
\_\_\_\_\_  
Notary Public

