MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 11, 2013

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

Dear Mr. Graber:

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

File Name:	*Townsel, Jacquline v. County of Erie and Erie County Sheriff's Department*
Document Received:	Order to Show Cause
Name of Claimant:	Jacquline Townsel 10 7th Street, #520 Buffalo, New York 14202
Claimant's attorney:	Joshua I. Ramos, Esq. 800 Main Street, Suite 3C Niagara Falls, New York 14301

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PAID
CHECK____ CASH____

JACQULINE TOWNSEL,

Petitioner/Plaintiff,

SEP 04 2013

ORDER TO SHOW CAUSE
"Oral Argument Requested"

-vs.-

ERIE COUNTY
CLERK'S OFFICE

COUNTY OF ERIE, and
ERIE COUNTY SHERIFF'S DEPARTMENT

INDEX NO.: 2013-2523

Respondents/Defendants.

Upon Affirmation of Joshua I. Ramos, Esq., September 3, 2013, and upon the documents annexed thereto heretofore had herein;

IT IS HEREBY ORDERED that the Respondents/Defendants show cause at this Court, to be held at the Courthouse thereof located at 25 DELAWARE AVE., Buffalo, Erie County, New York on September 24th, 2013 at 10:30 a.m./p.m. of that day or as soon thereafter as counsel can be heard, why an Order should not be entered herein permitting service of a late Notice of Claim and such other and further relief as may be just, equitable and proper.

Personal Service of this Order to Show Cause and supporting papers on the County Attorney's office on or before September 9th, 2013 shall be deemed good and sufficient service.

ENTER:

TIMOTHY J. DRURY, J.S.C.

HON. TIMOTHY J. DRURY, J.S.C. **J.S.C.**

GRANTED

SEP 04 2013

BY JUDITH M. CONNERS
JUDITH M. CONNERS
COURT CLERK

This paper received at the
Erie County Attorney's Office
from Joshua Ramos on
the 9th day of Sept., 2013
at 1:30 a.m./p.m.
Kelly Blankenwasth
Assistant County Attorney

STATE OF NEW YOUR
SUPREME COURT : COUNTY OF ERIE

JACQULINE TOWNSEL,
10 7th Street, #520
Buffalo, NY 14202

Plaintiff/Petitioner,

ATTORNEY AFFIRMATION

-vs-

COUNTY OF ERIE,
95 Franklin Street, Suite 1634
Buffalo, NY 14202

INDEX NO.:

ERIE COUNTY SHERIFF'S DEPARTMENT
10 Delaware Avenue
Buffalo, NY 14202

Defendants/Respondents.

JOSHUA I. RAMOS, an attorney duly licensed to practice in the State of New York, being duly sworn, deposes and says under penalty of perjury:

1. I am attorney for the Plaintiff/Petitioner herein. And as such, I am fully familiar with the facts and circumstances set forth.

2. This affirmation is made in support of the Petitioner/Plaintiff, JACQULINE TOWNSEL, application for leave to serve a late Notice of Claim upon the COUNTY OF ERIE and ERIE COUNTY SHERIFF'S DEPARTMENT.

3. This claim by Plaintiff/Petitioner is for money damages for injuries received as a result of a slip and fall while at the Erie County Holding Center as an inmate on or about May 9, 2013.

4. Under Public Authorities Law §1193-a, one is required to serve a notice of claim to be served within the time limits provided for under GML § 50-e. Hence, the claim should have been served on or before September 19, 2011.

5. Pursuant to GML § 50-e, leave to serve a late notice of claim is within the sound discretion of the Court.

6. GML § 50-e states in pertinent part,

> Upon application, the court, in its discretion, may extend the time to serve a notice of claim. . . . In determining whether to grant the extension, the court shall consider, in particular, whether the public corporation . . . whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits.

7. It cannot be said that the COUNTY OF ERIE and ERIE COUNTY SHERIFF'S DEPARTMENT will in any way prejudiced by the error. Particularly, where, as here, at the time of the accident the agents of the Respondent had actual notice because they agents of the Respondents took Ms. Townsel to the Erie County Medical Center for treatment resulting from her slip and fall.

8. Your deponent respectfully submits to the Court that the COUNTY OF ERIE will suffer no prejudice if this application is granted. However, if the application is denied, grave injury will occur to the plaintiff who sustained grievous and permanent injuries as a result of this accident.

9. The Court has great flexibility and discretion to grant an extension of time for filing a notice of claim against a municipality provided the extension does not exceed the time limit or commencement of an action against the potential defendant. *Wemett v. County of Onondaga*, 409 N.Y.S.2d 312 (4th Dept. 1978).

10. Under PAL § 1193-a(4), one must commence an action no later than one year and ninety days after the accrual of the action. Here, In accordance with the Fourth Department's decision in *Wemett*, this Court has great flexibility and discretion to grant the plaintiff's application because she is within the one hundred and ninety day time period, which runs until August 7, 2014.

11. Furthermore, to prevent any further delay if plaintiff's application is granted, the Notice of Claim against the COUNTY OF ERIE is prepared and ready to be served upon same. Attached hereto as ***"Exhibit A"*** is Plaintiff's fully executed proposed Notice of Claim.

12. Here, No Prior application for the relief herein requested has been made.

WHEREFORE, your deponent respectfully requests an Order of this Court permitting the service of the attached Notice of Claim on the COUNTY OF ERIE and ERIE COUNTY SHERIFF'S DEPARTMENT, together with such other and further relief as the Court deems just and proper

DATED: September 3, 2013
Niagara Falls, NY

JOSHUA I. RAMOS, ESQ.
Attorney for Petitioner/Plaintiff
800 Main Street, Suite 3C
Niagara Falls, NY 14301
(716) 810-6140

STATE OF NEW YOUR
SUPREME COURT : COUNTY OF ERIE

JACQULINE TOWNSEL,
10 7th Street, #520
Buffalo, NY 14202

Claimant,

NOTICE OF CLAIM

-vs-

COUNTY OF ERIE,
95 Franklin Street, Suite 1634
Buffalo, NY 14202

ERIE COUNTY SHERIFF'S DEPARTMENT
10 Delaware Avenue
Buffalo, NY 14202

Defendants.

TO: CITY OF DUNKIRK

PLEASE TAKE NOTICE, that JACQULINE TOWNSEL, pursuant to the statute in such cases made and provided, does hereby make claim against COUNTY OF ERIE and ERIE COUNTY SHERRIFF'S DEPARTMENT, and in support of such claim does state the following:

1. The claimant resides at 10 7th Street, Suite 520, Buffalo, NY 14202.

2. The claimant is represented by JOSHUA I. RAMOS, ESQ., 800 Main Street, Suite 3C, Niagara Falls, NY 14301.

3. This claim is one for money damages for personal injuries on behalf of the claimant for injuries to her, neck, back, and legs while she was in the custody of the above-stated defendants at the Erie County Holding Center; said injury occurred on or around May 9, 2013. It is alleged that the failed to provide safe and adequate facilities for the claimant and the above-stated Defendants recklessly, carelessly, negligently supervised and maintained their facilities, provided adequate facilities for the inmates, and created a hazardous condition when they failed to maintain the facilities. More specifically, the unit which Ms. Townsel was placed was flooded and hazardous.

4. A substantial factor in causing the aforesaid incident was negligent, careless, improper, and/or reckless maintenance, supervision, etc., by the City of Dunkirk its agents and/or employees, which caused and/or contributed to the claimant sustaining serious personal injuries.

5. Notice is hereby given that in the event that this claim for money damages is not paid within thirty (30) days of the service herein, it is my intention to commence litigation to recover for the damages which have been sustained.

DATED: August 16, 2013
Niagara Falls, NY

JOSHUA I. RAMOS, ESQ.
Attorney for the Claimant
800 Main Street, Suite 3C
Niagara Falls, NY 14301
(716) 810-6140

VERIFICATION

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

Jacqueline Townsel, being duly sworn deposes and says that I am the lead claimant in this action, that I have read the foregoing Notice of Claim and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Sworn to before me this 16th day of August, 2013.

Notary Public

JOSHUA I. RAMOS
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires Sept. 6, 2015