MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

October 17, 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:	*DeMario Moye v. Thomas Diina and Erie County Correctional Facility*
Document Received:	Notice of Claim
Name of Claimant:	DeMario Moye #58324 Erie County Correctional Facility 1581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Claimant is proceeding *pro se*.

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: COURT OF CLAIMS

DEMARIO MOYE, Claimant
V.
THOMAS DIINA SUPERINTENDENT, ETC. AL.
ERIE COUNTY CORR. FAC.
11581 WALDEN AVE.
ALDEN, NY. 14004

"NOTICE OF INTENT"

DATE: Sept. 26, 2013

D. Moye
DEMARIO MOYE

CC:
Superintendent THOMAS DIINA

CC: FILE
County Attorney: CHERYL A. GREEN

CC: —"Notice of CLAIM"—
TO: Erie County Executive/County Attorney for the County of ERIE
Erie County SHERIFF
MR. MARK C. POLONCARZ
Edward A. Rath Bldg
95 Franklin St. Buffalo NY. 14202
(716) 858-8500

Supreme Court : Court of Claims

DeMario Moye, Claimant
v
Thomas Diana, Superintendent, etc all.

"Notice of Intent

STATE OF NEW YORK
County of Erie
City of Alden

PLEASE TAKE NOTICE that DeMario Moye (58324), the Claimant, hereby MAKES claim against the County of Erie, State of NEW YORK, for damages sustained by him for person injury as follows: ON Sept. 4, 2013 at 10:00 pm, I slipped down the second part of the staircase caused by wet water & old damage Matts thats suppose to use to protect the stairwell but Most of them are too old or very damage, however, I dislocated My Right Knee which led to surgery due to "PATTELLA TEDON" which was done at ECMC; however after the incident occur I brought it to the Correctional Officer's attention who was working on DELTA-Unit at E.C.C.F on 9-4-13 & I asked for A "Nurse", & I was told due to "Lock Down, No Nurs can be called"; So, I request to have A "P.G./Sick call form" to request to be seen by A Nurse soon as possible "because My Knee is clearly swelling up". the Correctional Officer stated he "Couldn't find ANY forms, so take A Erie County Sheriff's Office Jail Management Division Form/Request slip", which I filled out correctly & submitted & I still have My copy. However, the following mourning at breakfast time, due to excessive pain & barely able to walk up & down the stairs where My cell is located on "DELTA-201-unit", I bring it to another Correctional Officer's attention who is working on the Delta-Unit from 11:00 p.m - 7:00 am Correctional Officer BIGAU, by showing him & comparing both My Knee's & stating clearly "Something isn't right, my right Knee is swell-up twice the size of My Left's. May I Please see A Nurse?" The 11:00 pm - 7:00 am Correctional Officer on the date of 9-5-13, who is working the Delta Unit (Officer BIGAU), states "I can't call any Nurse for you, there's a Emerency sick call, heck if I wanted to order ILE for myself I couldn't get it, so I advise you to wait & talk to A Nurse when she comes around to bring Meds on the Unit around 8:30 am or 9:00 am". So, I had to hop back up the stairs & around 8:30 am, I hopped back down the stairs & waited to see the Nurse on 9-5-13, I took A seat across from Correctional Officer Bigau's desk, ONCE

I'M SEEN by the Nurse She then States " oh, My! I'll Call you right down to Medical, that Knee is Serious I'm surprise your able to stand let alone walk" ✓ I then get assistance down to the Medical Unit & A Nurse I believe her Name to be "Jessica", Seeis Me & write down the incident & ASK ME "how did it happend & why I didn't come down last Night when I first slip & my Knee felt out of place, because you (I) have A Serious problem" ✓ I clearly Explains what both Correctional officer's stated & She states " thats A lie our staff is here 24 hrs. & AN incident like yours Needed to be SEEN then" ✓ They take ME to ROOM 1 to be SEEN by A doctor by the Name of Dr. HIDELBERGER, who assumed at first it WAS just "alot of fuild in My Knee that caused the swelling So, he stated" I'll Call you back down tomorrow which is A friday, so we can take X-RAYS & find out the real problem" ✓ So, then you have Nurse Jessica, who wrote my report & another Nurse Who Name is ~~Lorent~~ CORRINE, proceed to roll up two thick" BUFFALO NEWS paper sections" & PLACE them on both sides of My swell-up KNEE CAP, then WRAP an ACE badage tightly around it ✓ They provided ME Crunches & ASK AM I ON the "1st or 2nd floor?" ✓ I Clearly States "201 on the 2nd", which Doctor Hidelberger, logs into My Medical file & States " Well, Now your moving to A lower CELL" ✓ WHEN I go back to DELTA UNIT I SEE Correctional officer BIGAU, who worked a double on the date of 9-5-13 ON DELTA UNIT & he ASK ME "did they put in to Move your CELL?" ✓ I State " YES, to A lower CELL" ✓ Correctional officer BIGAU, SAYS "I'll have to wait for the CALL to MOVE you then" ON 9-6-13, the doctor Nor anyone from Medical calls the unit to request to SEE ME & I've yet to be Moved to A lower CELL location, so I'M force to hop up & down the stairs w/ crunchs for breakfast, facility Lockdowns (4 to 5 times a day), lunch, DINNER & MEDS (they provided ME tyenol) ✓ ON 9-7-13, in the mourning I bring it to another correctional officer's attention (officer HA-A-BELL-O,) that I would like A grievance form, due to Medical issues & I'm on crunches & still on the 2nd floor" he States " allow me A chance to 1st call Medical see why they've yet to SEE you & I'll call to move you into the open cell

115 & 17 you still want a Grievance form I'll give it to you". Officer Car-a-bell-o, then logs it into the log book & calls to get me moved to a lower cell "Delta unit cell 115.", Officer Car-a-bell-o, then brings it to the Nurse's attention when she bring the unit meds that " they had nothing in the log book & this guy has crunches & they didnt move him. I had to call this mourning to get him moved. I mean look at this guys knee". The Nurse who brought meds to Delta unit on 9.7.13 states clearly " oh No, I was right when they called the unit & spelled out his last name & told the officer he had to be moved on thursday". On 9.8.13 (Sunday) at 10:00 Am when I wake up I notice that now my right foot is swell up twice the size of it's normal size, so I report to the Delta unit 7:00am - 3:00pm officer which happends to be Officer Car-a-bell-o, he looks at my foot tells me "Not to lock in for the count" while he calls Medical & reports it right there on the spot. Nurse Jessica, comes to get me & assist me down to Medical & once at Medical she takes the ace badage & the " Buffalo News papers" off & states it was "too tight" to the point it's left a scar which at the time was assumed as a "blood clot". She see that the swelling from my right knee was also moved to my right foot. They call a lady sgt. & another Nurse comes to look at my knee & foot while they attempt to call the facility doctor, but the officer who is at the medical unit at that time (11:00am/12:00pm) states " he's not coming in, he's out enjoying golf". So, they gather two other correctional officer's & place me in the back of a patrol car as best as they could & take me to ECMC, where the doctors question me, do x-rays, & blood test to determine that I seriously tore ~~[illegible]~~ my "Patella Tendons" in my right knee which they say is caused for next day surgury, thats how bad it is. On 9.9.13 (Monday) they do surgury 4 to 5 different operations which left 28 staples & they state "I'll be confined to a wheel chair for no less than 9½ months to a year & then a year of rehab". Now however at 12:00Am t Night wednesday 9.11.13, two correctional officers from E.C.C.F states that "their here to pick me up due to the Watch Commander's orders". I'm

in shock because just earlier that day a doctor came to see me & attempt to size me for a "wheel chair & crunches" due to the pain I was experiencing he couldn't even finish the process, so the Nurse at ECMC on 9-10-11 & ECMC' the 9th floor Correction officer Ms. Wilson, both came to ease me with positive words & double doses of Meds (I was in that much pain) & they knew I was in no condition to move let alone stand up, however that night at 12:00am/12:30am the correctional officers were under order to pick me up & during that period they called to have me medically cleared, but even the medical staff at this facility didn't & still don't understand how could that have been. So, A Nurse comes to give me meds & a doctor comes to see me & says (his name is Kent Tyler at ECMC) "the longest a person stays is 4 to 5 days after this type of surgury, the facility feels your ready to leave & theres nothing else we can do for you but provide you medication anyways". So, you have the two correctional officers who clearly wants nothing to do with this one even states "I'll call the facility this guy can get on the back of the bus its stairs plus he is in no condition to leave", but the 9th floor officer who name I believe is "Ray", states "I had 2 knee surgurys he can make it", I'm protesting to not leave however I will myself with assistance to make it into a wheel chair plus the medication done kick in, but once we all make it outside even Dr. Kent Tyler, because the E.C.C.F. correctional officers don't want to touch me or assist me of them. One even tells me "man, I'm not touching you or with any of this". Once we make it outside I see its not a patrol car it a shuttle bus which the facility takes inmates to court in (the type of bus a person has to climb up stairs) I tell them its ~~impossi~~ impossible, however Dr. Kent Tyler, holds my right leg in the air while ECMC correctional officer the night/morning of 9-11-13 (Ray), gets behind me & they somewhat drag me up the stairs on the back of the bus against my will & I'm even crying" & telling them I'm yelling "Something in my knee is tearing", they ignore me "I'm place in the back of the bus on the floor", until I find the will to at least set in the back seat. It took at least 1 hour out there the night/morning of 9-11-13.

I was brought back to the facility & place in the medical unit & then around 7:00am they correctional officer tells me "I have a court date today". I never make it to court which was in my favor I had a [redacted] "Writ/Petition for writ of Habeas Corpus" the date of 9-11-13 to be heard in front of "Hon. Penny M. Wolfgang" part 24 at 25 Delaware at 9:30am. Emily P. Trott, was due to represent me on this matter, however alot of confusion & mis understanding was brought up & the facility waved my appearance without my "cosent" & now I'm without a court date & was told my "writ was waved". The writ could've granted my release now I'm force to find a legal way to attempt to be heard & represented & find a court date & I never once got a chance to speak to anybody on it. The facility gave me one call to Emily trott, she wasn't there, so I request to call again they "Deined me", however, I did write her 2 days ago, to attempt to clear up any misunderstandings & I let it be know I never "waved my appearance" the facility did it without my "cosent". Two days after my release from ECMC, at 6:00am I'm in pain so E.C.C.F sends me back to ECMC due to a tearing feeling in my knee, they do blood test, x-rays & check for blood clots & during the x-rays, they see my knee isn't on pace to heal correctly thats when the doctor explains the proceedure & states "well instead of 6 to 8 wks as we sussested it looks as it'll take 9½ to 12 months for that knee to be able to stand on or bend & it'll take another year of rehab". They release me & place me on 4 different meds. I'll like to state that our "shoe laces" be taking out of our sneakers as well.

The Claimant's Post-office address is: Erie County Corr. Fac. 11581 Walden Ave. - Alden, Ny. 14004

The date upon which the injury complained of occurred was the 4 day of Sept, 2013 in or about the hour of 10:00 p.m and continuing there after.

The injuries sustained by the Claimant by reason thereof are more particularly described as follows: RIGHT KNEE - TORN Pettella Tedon

The injuries complained of were sustained as a result of the negligence of said county in its care and management of the Erie County Correctional Facility, 11581 Walden Avenue, Alden, Ny 14004 which said facility was wholly under its operation and control.

laimant was incarcerated at said facility, and thus in the care and ustody of said Erie County Sheriff. Claimant requested Emergency/ :mmediate Medical Assistance, And to be moved to A lower level which I As deprived of until days later, Court date cancell/~~ab~~rit waved without ly cosent. If I had My Tennis shoes correctly wore with proper shoe laces. Due to the wrongful denial of Emergency/Immediate Medical ssistance, as well as the changing of the stair well/stair case matts not eing changed or new as well as the ~~[illegible]~~ stair case not being mop or dry, claimant was to suffer the above described injuries.

By reason thereof, the claimant sustained injury to his person due to said county's negligence and/or wrongful denial of property medical attention as well as correctly placing wet floor signs or simply having A porter mop up the stair case.

The claimant presents this claim and demand for adjustment and payment and gives notice that unless his claim is adjusted and paid within the time provided by law form the date of its presentation, it is claimant's intention to commence an action thereon.

Dated: Sept. 26, 2013

DeMario Moye Pro Se
Erie County Corr. Fac.
11581 Walden Ave.
Alden, NY 14004

Sworn to before me this 26 day of September, 2013

Signature, Notary Public

10-31-15