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

July 15, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

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:	*Leszkowicz, Beverley v. Timothy Howard, Mark N. Wipperman, John W. Greenan, Thomas Diina, Erie County Correctional Facility and County of Erie*
Document Received:	Verified Petition
Name of Claimant:	Beverley Leszkowicz 2549 Sandrock Road Eden, New York 14057
Claimant's attorney:	Diane M. Perri Roberts, Esq Lipsitz Green Scime Cambria LLP 42 Delaware Avenue, Suite 100 Buffalo, New York 14202

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.

Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 120, Buffalo, New York 14202-3924
Tel: 716 849 1333

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

BEVERLEY LESZKOWICZ
2549 Sandrock Road
Eden, New York 14057

Petitioner

For an Order and Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

Against

TIMOTHY HOWARD, as Erie County Sheriff,
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

And

MARK N. WIPPERMAN, as Erie County Undersheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

And

JOHN W. GREENAN, as Chief of Administration Services,
Division of the Office of the Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

And

THOMAS DIINA, as Superintendent of the Jail Management
Division of the Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

And

THE ERIE COUNTY CORRECTIONAL FACILITY,
as part of the Jail Management Division of the Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

And

FILED
ACTIONS & PROCEEDINGS
JUL 10 2014
ERIE COUNTY
CLERK'S OFFICE

NOTICE OF PETITION

Index No. I-2014-000105

07/10/2014 10:43:51
ERIE COUNTY CLERK
RCPT # 14105655
I 2014000105

2014 JUL 10 PM 3:53

216-NF

THE COUNTY OF ERIE,
95 Franklin Street
Buffalo, NY 14202

Respondents.

PLEASE TAKE NOTICE, that upon the annexed Verified Petition with Exhibits of Beverley Leszkowicz, dated the 7th day of July, 2014, an application will be made before a Justice to be assigned at a special term to be held at the Erie County Courthouse located at 95 Franklin Street, Buffalo, New York, on the 12th day of August, 2014 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, for a Judgment and Order pursuant to CPLR Article 78 granting Petitioner §207-c salary benefits for the period October 29, 2013 through and including November 18, 2013 for which Petitioner requested but was denied §207-c salary benefits for dates she received medical treatments for symptoms of the October 28, 2013 work-related injury she suffered, and restoring to Petitioner's vacation, personal and/or sick leave accruals, any and all such time used by her in lieu of the §207-c benefits day(s) denied by Respondents; together with such other and further relief as the Court may deem just and proper in this circumstance, together with the costs, disbursements and attorneys' fees connected with this proceeding.

PLEASE TAKE FURTHER NOTICE that a Verified Answer and Supporting Affidavit(s), if any, are to be served at least five (5) days before the time at which the Verified Petition herein is noticed to be heard.

Erie County is designated as the proper venue as the parties conduct their normal business relationship in that County.

Dated: July 9, 2014
Buffalo, New York

LIPSITZ GREEN SCIME CAMBRIA LLP

By: Diane M. Perri Roberts

Diane M. Perri Roberts, Esq.
Attorneys for Petitioner
42 Delaware Avenue, Suite 100
Buffalo, New York 14202
(716) 849-1333

TO: Michael Siragusa, County Attorney
County of Erie
95 Franklin Street, 16th Floor
Buffalo, New York 14202

Timothy Howard, as Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

Mark N. Wipperman, as Erie County Undersheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

John W. Greenan, as Chief of Administrative Services,
Division of the Office of the Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

Thomas Diina, as Superintendent of the Jail Management
Division of the Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

The Erie County Correctional Facility
as part of the Jail Management Division of the
Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

BEVERLEY LESZKOWICZ
2549 Sandrock Road
Eden, New York 14057

Petitioner

For an Order and Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

Against

TIMOTHY HOWARD, as Erie County Sheriff,
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

And

MARK N. WIPPERMAN, as Erie County Undersheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

And

JOHN W. GREENAN, as Chief of Administration Services,
Division of the Office of the Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

And

THOMAS DIINA, as Superintendent of the Jail Management
Division of the Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

And

THE ERIE COUNTY CORRECTIONAL FACILITY,
as part of the Jail Management Division of the Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

VERIFIED PETITION

Index No. I-2014-000105

And

THE COUNTY OF ERIE,
95 Franklin Street
Buffalo, NY 14202

Respondents.

The Petitioner, Beverley Leskowicz, by her attorneys, Lipsitz Green Scime Cambria LLP, Diane M. Perri Roberts of Counsel, as and for her Verified Petition alleges as follows:

1. At all times hereinafter mentioned, the Petitioner was an employee of the County of Erie and the Office of the Erie County Sheriff, at the Erie County Correctional Facility, which upon information and belief is part of the Jail Management Division of the Office of the Erie County Sheriff, in the County of Erie, State of New York.

2. Upon information and belief, the Erie County Correctional Facility is a division, department, and/or facility of the County of Erie providing correctional services for Erie County.

3. At all times hereinafter mentioned, the County of Erie was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York and its charter, having its principal offices in the County of Erie and State of New York.

4. At all times hereinafter mentioned, the Respondent Timothy Howard was and still is the Erie County Sheriff, Office of the Erie County Sheriff, having been duly elected and acting as such with authority to oversee personnel-related administrative operations of the Erie County Correctional Facility including, but not limited to, matters involving employees' benefits and coverage under General Municipal Law §207-c.

5. At all times hereinafter mentioned, the Respondent Mark N. Wipperman was and still is the Erie County Undersheriff, Office of the Erie County Sheriff, having been duly appointed and acting as such with authority to oversee personnel-related administrative operations of the Erie County Correctional Facility including, but not limited to, matters involving employees' benefits and coverage under General Municipal Law §207-c.

6. At all times hereinafter mentioned, upon information and belief, the Respondent John W. Greenan was and still is Chief of Administrative Services for the Office of the Erie County Sheriff, having been duly appointed and acting as such, with authority to act in matters involving certain of the personnel of the Office of the Erie County Sheriff and the Erie County Correctional Facility, including but not limited to matters involving employees' benefits and coverage under General Municipal Law §207-c.

7. At all times hereinafter mentioned, upon information and belief, the Respondent Thomas Diina, was and still is Superintendent of the Jail Management Division of the Office of the Erie County Sheriff, having been duly appointed and acting as such, with authority to act in matters involving certain of the personnel of the Office of the Erie County Sheriff and the Erie County Correctional Facility, including but not limited to matters involving employees' benefits and coverage under General Municipal Law §207-c.

8. At all times hereinafter mentioned, upon information and belief, the Respondent John Rodriguez was and still is a First Deputy Superintendent of the Jail Management Division of the Office of the Erie County Sheriff, having been duly appointed and acting as such, with authority to act in matters involving certain of the personnel of the Office of the Erie County Sheriff and Erie County Correctional Facility, including but not limited to matters involving employees' benefits and coverage under General Municipal Law §207-c.

9. I currently am, and was at all material times, a Correction Officer employed by Erie County, the Office of the Erie County Sheriff and the Erie County Correctional Facility; I have been so employed since on or about August 12, 1991.

10. I am, and was at all material times, a member of the Civil Service Employees Association, Inc., Local 1000 A.F.S.C.M.E., AFL-CIO Erie Unit of Local 815 ("CSEA").

11. It is my understanding and belief that CSEA, the County of Erie and the Office of the Sheriff are parties to a Collective Bargaining Agreement ("CBA") entered into effective December 5, 2012 and covering the period January 1, 2007 through December 31, 2017 (See signature page at **Exhibit 1**).

12. It is also my understanding and belief that Correction Officers at the Erie County Correctional Facility are covered under that CBA.

13. It is my understanding and belief that "Appendix E" of the CBA between the County of Erie, the Office of the Sheriff of Erie County and CSEA sets out the "Policy and Procedure" with respect to General Municipal Law §207-c benefits. (Also see **Exhibit 1**).

14. It is my understanding that relevant Section 2 of the CBA's Appendix E provides:

> **"Section 2**
>
> a. Any employee who is injured in the performance of his/her duties, or is taken sick as a result of the performance of his/her duties, shall file a line of Duty Injury Request Form (LDI) that must specify the nature of the injury or illness and it shall recite in detail how the injury/illness was incurred. In the even that an employee is unable to complete LDI Request Form, it shall be completed and submitted by the employee's immediate supervisor.
>
> . . .
>
> c. The Sheriff shall have the authority to determine whether an employee is entitled to 207-c benefits. In making the determination, the Sheriff or his/her designee shall examine the

facts and circumstances giving rise to the application for such benefits. On an initial determination for benefits, the employee must cooperate with the Sheriff and provide all necessary information, reports and documentation.

d. The Sheriff or his/her designee shall have ten (10) working days to act on written request for 207-c benefits. In the case of a denial of benefits, the Sheriff shall issue a written determination to the affected employee setting forth the reasons for the Sheriff's decision.

. . .

f. If an employee's request is denied, he or she shall have her the right to challenge the denial pursuant to the provisions set forth in Article 78 of the Civil Procedure Law and Rules.

15. On October 28, 2013, during the course of performing regular work duties, I sustained a sprain to my left shoulder while backing up to a desk and lifting myself to sit on the edge of the desk.

16. I complied with the provisions of Section 2 of Appendix E of the CBA to the extent they required I complete certain tasks or take certain actions. Attached at **Exhibit 2** to this Verified Petition are the "Incident Report" I completed for the Respondents on or about October 28, 2013, and my written request for §207-c benefits.

17. By letter dated November 27, 2013, Chief John A. Anthony, former Chief of Administrative Services, acknowledged receipt of my request for §207-c benefits (also referred to as LDI"), and advised that the Sheriff's Office determined further investigation was required. Chief Anthony requested I complete a claim form, a medical authorization and a table of treating providers. All of those completed documents, as submitted, are included in Exhibit 2 hereto. A copy of Chief Anthony's letter is attached hereto as **Exhibit 3**.

18. Sometime after March 20, 2014, I received a letter dated March 20, 2014 from John W. Greenan, the new Chief of Administrative Services. Chief Greenan stated that "Upon review, I find that your request does not meet 207-c General Municipal law. Based on this finding, your application for 207-c benefits is denied." A copy of Chief Greenan's letter is attached to this Verified Petition as **Exhibit 4.**

19. Chief Greenan's letter of March 20, 2014 does not set forth the reasons for the decision of the Sheriff's Office as required under §2(d) of Appendix E to the CBA; the letter does not say how it is my §207-c application "does not meet 207-c General Municipal Law."

20. Although Chief Greenan's letter indicated I could, within ten (10) days, "request a hearing to address the findings," the CBA's Appendix E at §2(f) provides that if my request for §207-c benefits is denied, as it was, I "shall" have the right to challenge that denial pursuant to Article 78 of the Civil Practice Law and Rules.

21. To this date, I have not received any coverage or benefits under §207-c for the period October 29, 2013 through and including November 18, 2013, for which I submitted a request with medical documentation of my condition causally related to my work injury on October 28, 2013.

22. I am entitled to §207-c benefits for that period of time because I was injured on the job during my course of duties.

23. No previous application for the same or similar relief for this period of time has been made.

WHEREFORE, the Petitioner prays that this Court will enter a Judgment and Order pursuant to Article 78 of the Civil Practice Law and Rules:

(a) Granting Petitioner §207-c salary benefits for the period October 29, 2013 through and including November 18, 2013 for which Petitioner requested but was denied §207-c salary benefits for dates she received medical treatments for symptoms of the October 28, 2013 work-related injury she suffered;

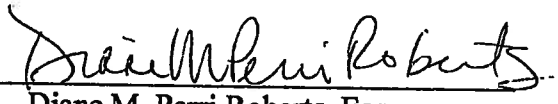
(b) Restoring to Petitioner's vacation, personal and/or sick leave accruals, any and all such time used by her in lieu of the §207-c benefits day(s) denied by Respondents; and

(c) Granting such other and further relief as the Court may deem just and proper in this circumstance, together with the costs, disbursements and attorneys' fees connected with this proceeding.

Dated: July 7, 2014
Buffalo, New York

Beverley Leszkowicz, Petitioner

LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Petitioner

By: 

Diane M. Perri Roberts, Esq.
42 Delaware Avenue, Suite 100
Buffalo, New York 14202
(716) 849-1333 Ext. 465

TO: Michael Siragusa, County Attorney
County of Erie
95 Franklin Street, 16th Floor
Buffalo, New York 14202

Timothy Howard, as Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

Mark N. Wipperman, as Erie County Undersheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

John W. Greenan, as Chief of Administrative Services,
Division of the Office of the Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

Thomas Diina, as Superintendent of the Jail Management
Division of the Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

The Erie County Correctional Facility
as part of the Jail Management Division of the
Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

VERIFICATION

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

Beverley Leszkowicz, being duly sworn, deposes and says that she is the Petitioner in the within action and that she has read the foregoing Verified Petition and knows the contents thereof, that the same is true to Deponent's knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters Deponent believes them to be true.

Beverley M Leszkowicz
Beverley Leszkowicz

Subscribed and sworn to before me
this 7th day of July, 2014

Gloria R Bogdan
Notary Public

GLORIA R. BOGDAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 9, 2014