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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH.
SECOND ASSISTANT COUNTY ATTORNEY

MEMORANDUM

TO: Karen McCarthy, Clerk, Erie County Legislature
FROM: Michelle M. Parker, First Assistant County Attorney
DATE: July 17, 2015
RE: Transmittal of New Claims Against Erie County

Ms. McCarthy:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find four (4) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Donald E. Smith v. Erie County DA, et al.
Roger Miles v. County of Erie, et al.
Yousif Karamalla v. Al Dirschberger, et al.
Trinity Park Housing Development Fund Co. v. County of Erie, et al.

MMP:dld

Attachments



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

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DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 14, 2015

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

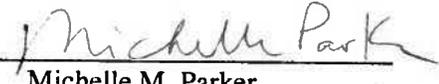
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Smith, Donald E. v. Erie County District Attorney and Evans Town Police Department</i>
Document Received:	Order to Show Cause
Name of Claimant:	Donald E. Smith Fed. Reg. 15688-055 Low Security Correctional Institution PO Box 999 Buttner, North Carolina 27509
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP/dld

Enc.

Comm. 15D-5

Page 2 of 30

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION OF
DONALD E. SMITH, Reg.# 15688-055

Petitioner,

-vs-

ERIE COUNTY DISTRICT ATTORNEY,
EVANS TOWN POLICE DEPARTMENT,

Respondents.

ORDER TO
SHOW CAUSE

RETURN ON
PAPERS ONLY

Index No.
I-2014-00113

SUPREME COURT, ERIE COUNTY

HON. PAULA L. FEROLETO, JUSTICE PRESIDING

APPEARANCES:

Petitioner, Pro Se
DONALD E. SMITH, Reg.# 15688-055

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, dated April 3, 2014, with accompanying exhibits, and it appearing that the above referenced petitioner, DONALD E. SMITH, 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 RESPONDENTS SHOW CAUSE at a Special Term of the Supreme Court to be held in and for the County of Erie on **AUGUST 10, 2015** before the HON.

CHRISTOPHER J. BURNS, Justice of the Supreme Court, in Part 19 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 respondents 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 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 respondents, the Erie County District Attorney and the Evans Town Police Department, on or before **July 13, 2015** 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 the Evans Town Attorney, 8787 Erie Road, Angola, New York, 14006; 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 Justice Burns, and any party receiving an adjournment shall notify the other party or parties of said adjourned date; and it is further

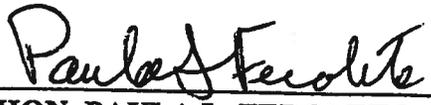
ORDERED that it is the petitioner's responsibility to:

(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. Christopher J. Burns**, 25 Delaware Avenue-Fifth Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date; and it is further

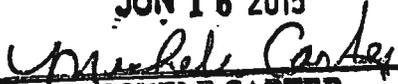
ORDERED that a copy of any answer or response shall be served upon the petitioner not less than five (5) days before the return date. The original of any such answer or response is to be delivered to the chambers of Justice Burns not less than three (3) days prior to said return date.

DATED: Buffalo, New York
June 14, 2015



HON. PAULA L. FEROLETO
Justice of the Supreme Court

GRANTED:
GRANTED

JUN 16 2015
BY 

MICHELE CARTER
COURT CLERK

-3-



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 14, 2015

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

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>Miles, Roger v. City of Buffalo and County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Roger Miles 1126 East Delevan Buffalo, New York 14202
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

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.

Comm. 15D-5

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STATE OF NEW YORK: SUPREME COURT
COUNTY OF ERIE

ROGER MILES,

Claimant,

-against-

CITY OF BUFFALO, and COUNTY OF ERIE,

Defendant.

State of New York)

County of Erie) SS:

NOTICE OF CLAIM PURSUANT
TO MUNICIPAL LAW 50-e

This paper received at the
Erie County Attorney's Office
from Philip B. Cicci on
the 7 day of July, 2015
at 2:50 a.m./p.m.
Kenneth R. Huber
Assistant County Attorney

Roger Miles, being duly sworn, deposes and says that:

1. This is a Notice of Claim served pursuant to Municipal Law 50-e against the City of Buffalo and Erie County.
2. This claim is served via certified mail, return receipt requested, within 90 (ninety) days from the date of the favorable determination in my favor dismissing criminal charges brought against me on April 7, 2015.
3. The bases of my claims against the City of Buffalo are that on January 6, 2015, I was falsely arrested and thereafter maliciously prosecuted without probable cause by Buffalo City Police officers WILLIAM REZABEK, J. MONDAL, I. BAKER and members of the ERIE COUNTY DISTRICT ATTORNEY'S OFFICE.
4. The police officers arrested me based on false claims that they had a "911 CALL OF NARCOTICS". This claim was false and known to be false by the arresting officers and prosecuting officials.
5. I was charged with violating Penal Law 178.10 (CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS, FOURTH DEGREE) based on my possession of my own prescription medications which the police and prosecutors well knew were prescribed to me.
6. My prescription medications were confiscated and taken from me during a search which was performed without probable cause to believe that I committed, or was about to commit, a crime.
7. I was arrested without probable cause and falsely charged with a crime for possessing my own prescription medications.
8. The police and prosecutors refused to return to me my prescribed medications. As a result, I had a seizure due to not having the medications to treat my condition that they were prescribed for.

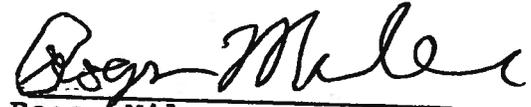
9. I was arraigned in Buffalo City Court on criminal diversion of prescription medications and thereafter was required to appear in court on two occasions despite the fact that the Buffalo City police and Erie County Prosecutors knew that I had been illegally arrested, my prescription medications, car and money were seized without probable cause and there was no merit to the charges of criminal diversion of prescription medication. There was no signed or sworn supporting deposition from any eyewitness.

10. On or about April 7, 2015, the charges of criminal diversion of prescription medication were dismissed.

11. I seek both compensatory damages for the illegal arrest and restraint on my liberty and freedom of movement, mental anguish, deprivation of my prescription medication, pain and suffering, deprivation of my civil rights; and punitive damages for the wilful misconduct of the police and prosecutors.

12. A copy of this Notice of Claim is being served via certified mail, return receipt requested, on the following: ERIE COUNTY ATTORNEY, 95 FRANKLIN STREET, ROOM 1632, BUFFALO, NEW YORK 14202; CORPORATION COUNSEL, 1100 CITY HALL, BUFFALO, NEW YORK 14202; and SUPREME COURT, ERIE COUNTY, 92 FRANKLIN STREET, BUFFALO, NEW YORK 14202.

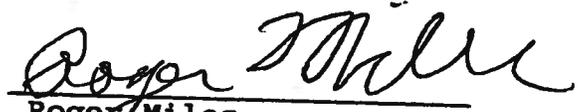
Dated: July 6, 2015


Roger Miles

VERIFICATION

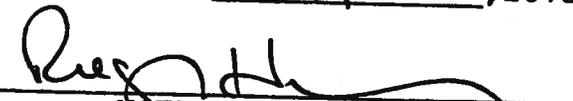
Roger Miles, being duly sworn, deposes and says that he is the claimant in the above Notice of Claim against the City of Buffalo and Erie County and has read and knows the contents thereof; the said contents are true to the best of his knowledge, except as to matters stated upon information and belief, and as to those matters he believes them to be true.

Dated: July 6th, 2015


Roger Miles
1126 East Delevan
Buffalo, New York 14202

SWORN TO BEFORE ME THIS

6th DAY OF July, 2015


NOTARY PUBLIC

ROGERS HICKS
COMMISSIONER OF DEEDS
In and for Buffalo Erie County, NY
Commission Expires December 31, 2016



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 14, 2015

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

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>Karamalla, Yousif v. Sharon Devine and Al Dirschberger</i>
Document Received:	Verified Petition
Name of Claimant:	Yousif Karamalla 240 Richmond Avenue, Apt. 13R Buffalo, New York 14222
Claimant's attorney:	Barbara Weiner Empire Justice Center Senior Staff Attorney 119 Washington Avenue, 3rd Floor Albany, New York 12210

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____


Michelle Parker
First Assistant County Attorney

MMP/dld
Enc.

Comm. 15D-5

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of

YOUSIF KARAMALLA, on behalf of himself and
all persons similarly situated

Petitioners-Plaintiffs,

-against-

SHARON DEVINE, as Executive Deputy
Commissioner of the New York State Office
of Temporary and Disability Assistance,

and

AL DIRSCHBERGER, as Commissioner of the Erie
County Department of Social Services,

Respondents-Defendants.

For a Judgment Pursuant to § 3001 and Articles 9
and 78 of the Civil Practice Law and Rules

**NOTICE OF
PETITION
and CLASS ACTION
COMPLAINT**

Index No. 2015-000107

PAID 
CHECK _____ CASH _____

JUN 15 2015

**ERIE COUNTY
CLERK'S OFFICE**

PLEASE TAKE NOTICE THAT upon the annexed verified petition and complaint in this action; the annexed memorandum of law by Empire Justice Center, and the affirmation and certification of Barbara Weiner, Esq. pursuant to CPLR 1101(e) requesting that Yousif Karamalla be permitted to proceed as a poor person, an application will be made to this Court at the Erie County Courthouse on August 10, 2015 at _____ o'clock, or as soon thereafter as counsel may be heard, for a judgment pursuant to § 3001 and Articles 9 and 78 of the CPLR: *August 19, 2015 @ 9:30 Myer & Ramirez*

(1) annulling and reversing Respondent Devine's Fair Hearing Decision # 6870825M dated

February 17, 2015, which affirmed Respondent Dirschberger's denial of the Petitioner's Safety Net Assistance application, on the grounds that said determination is arbitrary and capricious, an error of law, and in violation of federal and state laws and regulations; (2) directing Respondent Dirschberger to re-determine Petitioner's eligibility for Safety Net Assistance benefits retroactive to his September 26, 2014 application; (3) declaring that the policy of Respondent Devine and her agency regarding the denial of Safety Net Assistance benefits to immigrants with TPS is in violation of law insofar as she neglects or refuses to advise local social services districts that immigrants with TPS are PRUCOL and thus meet the qualified alien eligibility category for Safety Net Assistance benefits; (4) permanently enjoining the Respondent Devine from continuing to follow, implement, or enforce the policy of denying benefits to applicants for Safety Net Assistance solely on the basis of their Temporary Protected Status; (5) certifying this action and proceeding, pursuant to CPLR Article 9, as a class action, consisting of all past, present, and future applicants of Safety Net Assistance in New York State who at the time of their application filed on or after June 17, 2012 were or are immigrants granted TPS by the USCIS and were or will be denied Safety Net Assistance benefits solely as a result of their immigration status; (6) ordering Respondent Devine to (i) identify all class members who have been deprived of Safety Net Assistance benefits as a result of a local district's failure or refusal to consider TPS as PRUCOL since June 17, 2012; (ii) re-determine the eligibility of all identified class members; and (iii) to provide all identified class members with adequate written notice of the re-determination of Safety Net Assistance eligibility; (7) awarding costs and disbursements pursuant to Articles 81 and 83 of the CPLR and counsel fees pursuant to CPLR 909, Article 86, 42 USC § 1988, and any other relevant state or federal provision; and (8) granting Petitioner such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that the verified answer and supporting affidavits, if any, must be served at least seven (7) days before the return date of this application.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 7804 (e), Respondents are directed to file with the Clerk of the Court Respondent's Answer and answering affidavits, if any, together with a certified transcript of record of the proceedings under consideration, together with their entire official file containing the records of the Petitioner herein held by the Respondents as official records kept by the Respondents.

Erie County is designated as the venue of this proceeding pursuant to CPLR 506 (b) and 7804 (b) because it is Respondent Dirschberger's principal place of business, the location of Mr. Karamalla's residence, and where most of the actions complained of with respect to the named Petitioner arose.

Dated: June 10, 2015



Barbara Weiner,
Saima Akhtar
Empire Justice Center
Attorneys for the Appellant
119 Washington Ave., 3rd floor
Albany, NY 12210
(518) 935-2847
bweiner@empirejustice.org

Robert F. Graziano
Erie County Bar Association
Volunteer Lawyers Project
237 Main St., Suite 1000
Buffalo, NY 14203
Phone: (716) 847-0662 (ext. 304)
Fax: (716) 847-0307
rgraziano@ecbavlp.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X
In the Matter of the Application of

YOUSIF KARAMALLA, on behalf of himself and
all persons similarly situated

Petitioner-Plaintiff,

-against-

SHARON DEVINE, as Executive Deputy
Commissioner of the New York State Office of
Temporary and Disability Assistance,

and

AL DIRSCHBERGER, as Commissioner of the Erie
County Department of Social Services,

Respondents-Defendants.

For a Judgment Pursuant to § 3001 and Articles 9 and
78 of the Civil Practice Law and Rules

**VERIFIED
PETITION
and CLASS ACTION
COMPLAINT**

Index No.: _____

-----X

PRELIMINARY STATEMENT

1. Petitioner-Plaintiff (hereinafter Petitioner) Yousif Karamalla, by and through his attorneys, Empire Justice Center, Barbara Weiner of counsel, and Robert Graziano of the Erie County Bar Association Volunteer Lawyers Project, brings this hybrid Article 78 proceeding and action for declaratory relief under § 3001 of the Civil Practice Law and Rules (CPLR) against the Respondents-Defendants (hereinafter Respondents). Petitioner seeks the reversal of a decision after Fair Hearing rendered by the Respondent New York State Office of Temporary and Disability Assistance (hereinafter Respondent OTDA) dated February 17, 2015, and a Declaration that the policy applied in that decision violates Petitioner's rights to

equal treatment under the Equal Protection Clauses of the United States and New York Constitutions and to “aid and care to the needy” under article XVII, §1 of the NY Constitution. He also asks this Court to enjoin the Respondents from applying that policy against himself and all other similarly situated individuals.

2. Petitioner brings this class action on behalf of himself and on behalf of all past, present, and future applicants for Safety Net Assistance in New York State who, at the time of their application on or after June 17, 2012:
 - a) were or are immigrants granted Temporary Protected Status (TPS) by the United States Citizenship and Immigration Services (USCIS), and
 - b) were or will be denied Safety Net Assistance benefits solely as a result of their immigration status.
3. The decision after Fair Hearing that is the subject of this Article 78 proceeding and complaint is identified by the Respondent OTDA as FH # 6870825M (petitioner’s exhibit A). This decision upheld the determination of Respondent Al Dirschberger, as Commissioner of the Erie County Department of Social Services, to deny Mr. Karamalla’s application for Safety Net Assistance benefits on October 23, 2014 because he is neither a citizen nor “an alien with a certain kind of immigration status” (petitioner’s exhibit B).
4. Petitioner seeks an Order declaring the decision after Fair Hearing to be arbitrary and capricious, an error of law, and in violation of the Equal Protection Clauses of the United States and New York Constitutions and article XVII, § 1 of the New York Constitution.
5. Petitioner also seeks a Declaratory Judgment, pursuant to CPLR 3001, that all persons granted TPS must be classified as immigrants “permanently residing under color of law”

(PRUCOL) when local social services districts determine the eligibility of such persons for Safety Net Assistance.

THE PARTIES

6. Petitioner, Yousif Karamalla, is a 64 year old Sudanese immigrant who resides in Buffalo, New York. Mr. Karamalla was the appellant in an Administrative Fair Hearing that occurred on January 28, 2015, the outcome of which is the subject of this action.
7. Respondent Sharon Devine is the Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance and is responsible for the administration of Public Assistance programs in New York State and for the agency's compliance with federal and state laws and regulations pursuant to Social Services Law § 34.
8. Respondent Al Dirschberger is the Commissioner of the Erie County Department of Social Services (ECDSS) and is responsible for the administration of Public Assistance programs in Erie County and for the agency's compliance with federal and state laws pursuant to Public Health Law §§ 201-206 and Social Services Law § 364.

VENUE

9. Pursuant to CPLR 506 (b) and 7804 (b), venue is proper in Erie County as it is Respondent Dirschberger's principal place of business, the location of Mr. Karamalla's residence, and where most of the actions complained of with respect to the named Petitioner arose.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

10. The Fourteenth Amendment of the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws” (US Const, 14th Amend, § 1).
11. New York State’s Constitution, like the federal Constitution, requires New York State to treat all residents equally. Section One of article I of the New York Constitution states, “No person shall be denied equal protection of the laws of this state or any subdivision thereof.”
12. Section One of article XVII of the New York Constitution provides:

The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions and in such manner and by such means as the legislature may from time to time determine.
13. One of the Public Assistance programs that New York has enacted in fulfillment of its constitutional duty to aid the needy is the Safety Net Assistance program (SSL § 2 [19]; SSL Art 5, titles 1, 3, and 10).
14. New York State is divided into fifty-eight local social services districts, of which Erie County is one. Respondent OTDA is responsible for supervising the administration of the Public Assistance programs and has delegated to the local social services districts the responsibility of administering, in the first instance, the Safety Net Assistance program within their respective geographic territories (SSL §§ 17, 20, 22, 61).
15. Social Services Law § 131 (1) imposes a duty on social services officials “to provide adequately for those unable to maintain themselves.”
16. Respondent OTDA is responsible for ensuring that the local districts administer the Safety Net Assistance Program in accordance with State laws (SSL §§ 20, 22).

17. Social Services Law § 122 (c) (ii) defines those immigrants who are eligible for Safety Net Assistance and includes those who are “otherwise permanently residing in the United States under color of law.”

STATEMENT OF FACTS

18. Petitioner, Yousif Karamalla, is a 64 year old Sudanese immigrant who has lived in the United States since 1994. He currently resides in Buffalo, New York. He received a Bachelor's Degree in Accounting from the University of Cairo (Khartoum Branch) in 1973.
19. Mr. Karamalla initially entered the United States under a six-month visitor's visa, which was later extended for an additional six months on Feb 2, 1995.
20. In 1995, Mr. Karamalla applied for asylum. His application was eventually denied in December 1999.
21. In 2005, after unsuccessfully appealing his asylum denial, Mr. Karamalla applied for and was granted TPS. Since that time, his TPS has been continuously and regularly renewed, and it is currently valid until May 2, 2016 (*see* petitioner's exhibit C).
22. Mr. Karamalla was unable to utilize his Bachelor's Degree in Accounting when he came to the United States, but since his arrival, he has worked a variety of jobs.
23. However, due to his diabetes and declining health, he had to stop working in September 2013.
24. Mr. Karamalla's only income is \$324 in monthly Social Security Retirement benefits, which is not enough to meet his basic needs.
25. Mr. Karamalla first applied for assistance from Respondent ECDSS in January of 2014. Although the low amount of his monthly Social Security payment would otherwise entitle

him to income-based public benefits, his application for Safety Net, Supplemental Nutrition Assistance Program (SNAP) and Medicaid benefits was denied because of his immigration status.

26. Respondent ECDSS ultimately approved Medicaid benefits for Mr. Karamalla because Medicaid is administered by the New York State Department of Health (hereinafter DOH), which does not exclude persons with TPS from the State's Medicaid program (*see Documentation Guide to Citizenship and Immigrant Eligibility for Health Coverage, General Information System message 08 MA/009, Mar 26, 2008, at 10 [attached hereto as petitioner's exhibit D]*).
27. Mr. Karamalla filed the application for Safety Net Assistance and SNAP benefits at issue in this appeal on September 26, 2014.
28. Respondent ECDSS denied the application by notice dated October 23, 2014 on the grounds that Mr. Karamalla is neither a citizen nor "an alien with a certain kind of immigration status" (petitioner's exhibit B).
29. On October 27, 2014, Mr. Karamalla requested a Fair Hearing, which was held on January 28, 2015.
30. At the hearing, Mr. Karamalla withdrew his request to appeal the denial of his application for SNAP benefits. Through his attorney, he acknowledged that people with TPS are ineligible for federally funded SNAP benefits.
31. Thus, the only issue at the Fair Hearing was Respondent ECDSS's denial of Mr. Karamalla's Safety Net Assistance benefits.
32. On February 17, 2015, the Respondent OTDA issued Fair Hearing # 6870825M, which is the subject of this Article 78 proceeding and Declaratory Judgment action, and upheld the

determination of Respondent ECDSS to deny Mr. Karamalla's application for Safety Net Assistance (petitioner's exhibit A).

33. Mr. Karamalla continues to receive Medicaid.

CLASS ACTION ALLEGATIONS

34. Petitioner Karamalla brings this class action pursuant to CPLR article 9 on behalf of all past, present, and future applicants for Safety Net Assistance in New York State who filed or submitted their applications to their local social services districts on or after June 17, 2012 and who:

- a) were or are immigrants granted TPS by the USCIS; and
- b) were or will be denied Safety Net Assistance benefits solely as a result of their immigration status.

35. The proposed class is so numerous that joinder of all members is impracticable.

36. There are questions of law and fact common to the proposed class that predominate over any questions affecting only individual members, to wit, whether, for the purpose of determining eligibility for Safety Net Assistance, the Respondents must classify immigrants with TPS as PRUCOL.

37. The claims of the Petitioner are typical of the claims of the plaintiff class. All claims arise from the Respondent OTDA's course of practice and administrative conduct, which unconstitutionally deprive the plaintiff class of necessary Safety Net Assistance benefits solely on the basis of their lawful immigration status.

38. Mr. Karamalla's claim that the Respondents' policies and actions violate his rights under the United States and New York State Constitutions is identical to the claims that are raised by the proposed class as a whole, as well as by each member of the proposed class.
39. The Petitioner will fairly and adequately protect the interests of the class.
40. In supporting his own claims, the named Petitioner will simultaneously advance the claims of the other class members.
41. Petitioner is represented by the Empire Justice Center and the Erie County Bar Association Volunteer Lawyers Project. These public interest law firms have extensive experience in public assistance and class action litigation, having litigated such matters in the courts of New York State and in the United States District Courts in New York. Counsel for the Petitioner will diligently and expeditiously press the claims of the class.
42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Indeed, only a class remedy will afford relief to those who have been victimized by the challenged policies and practices of the Respondent OTDA, who is directing local social services districts to deny benefits to individuals solely because of their status as immigrants with TPS.
43. The members of the proposed class have little or no income, and are without the resources that would be necessary to raise their claims in individual actions. Furthermore, due to the complexity of the issues raised by this class action and the scarcity of legal services attorneys available to take public assistance cases, it is unlikely that a substantial number of individual proceedings would be brought by the members of the proposed class.

44. Class certification is therefore essential to ensure that all potential plaintiffs and class members will be protected and that the resources of the judicial system and all counsel will be efficiently utilized.

LEGAL CLAIMS

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE PETITIONER

45. The Fair Hearing Decision issued by the Respondent Devine is arbitrary and capricious within the scope of CPLR 7803 (3) because there is no rational basis for excluding someone who is lawfully residing in Temporary Protected Status, like Mr. Karamalla, from the PRUCOL classification, thereby rendering him ineligible for Safety Net Assistance benefits.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF THE PETITIONER

46. The Fair Hearing Decision issued by the Respondent Devine is affected by an error of law pursuant to CPLR 7803 (3) insofar as the decision violates the Petitioner's rights under the State and Federal constitutions and under New York Social Services Law §§ 122 and 131 (1).

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF THE PETITIONER AND THE PLAINTIFF CLASS

47. Respondents' denial of Safety Net Assistance benefits to the Petitioner and the members of the plaintiff class, solely as a result of their immigration status, violates the Equal Protection Clauses of the New York Constitution (article I, § 6) and the Fourteenth Amendment of the United States Constitution, as made actionable by 42 USC § 1983.

**AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF THE PETITIONER
AND THE PLAINTIFF CLASS**

48. Respondents' denial of Safety Net Assistance benefits to the Petitioner and the members of the Plaintiff class solely as a result of their immigration status violates article XVII, § 1 of the New York Constitution, which guarantees the aid and care of the needy.

RELIEF REQUESTED

WHEREFORE, Petitioner on behalf of himself and on behalf of the proposed class, respectfully requests that the Court issue an Order and Judgment:

- a) **ANNULLING AND REVERSING** Respondent Devine's Fair Hearing Decision # 6870825M dated February 17, 2015, which affirmed Respondent Dirschberger's denial of the Petitioner's Safety Net Assistance application, on the grounds that said determination is arbitrary and capricious and violates Petitioner's rights to equal protection under the United States and New York constitutions and to "aid and care to the needy" under article XVII, § 1 of the New York State Constitution;
- b) **DIRECTING** Respondent Dirschberger to re-determine Petitioner's eligibility for Safety Net Assistance benefits retroactive to his September 26, 2014 application;
- c) **CERTIFYING** this action and proceeding, pursuant to CPLR article 9, as a class action;
- d) **DECLARING** that Respondent OTDA's policy and practice of denying Petitioner and plaintiff class Safety Net Assistance benefits solely as a result of their immigration status to be unlawful;
- e) **PERMANENTLY ENJOINING** Respondent OTDA's policy and practice of denying Petitioner and the plaintiff class Safety Net Assistance benefits solely as a result of their immigration status;
- f) **ORDERING** Respondent OTDA to:

- i. identify all class members who since June 17, 2012 have been denied Safety Net Assistance benefits as a result of Respondent's policy of refusing to recognize TPS as a PRUCOL category;
- ii. re-determine the eligibility of all identified class members; and
- iii. to provide all identified class members with adequate written notice of the re-determination of Safety Net Assistance eligibility;

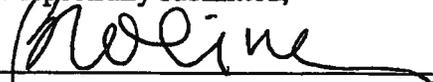
ADDITIONAL RELIEF

- g) AWARDING costs and disbursements pursuant to articles 81 and 83 of the CPLR and counsel fees pursuant to CPLR 909, article 86 of the CPLR, 42 USC § 1988, and any other relevant state or federal provision; and
- h) GRANTING such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Section 7804 of the CPLR, the Respondent Devine shall file with her answer a certified transcript of the record of the proceedings under consideration, and any answering papers shall be served on the undersigned no later than seven (7) days before the return date of the Petition.

Dated: June 10, 2015

Respectfully submitted,



Barbara Weiner
Saima Akhtar
Empire Justice Center
Attorney for the Appellant
119 Washington Ave., 3rd floor
Albany, NY 12210
Phone: (518) 935-2847

Fax: (518) 935-2852
bweiner@empirejustice.org

Robert F. Graziano
Erie County Bar Association
Volunteer Lawyers Project
237 Main St., Suite 1000
Buffalo, NY 14203
Phone: (716) 847-0662 (ext. 304)
Fax: (716) 847-0307
rgraziano@ecbavlp.com

TO:

Al Dirschberger, Commissioner
Erie County Department of Social Services
95 Franklin Street
Buffalo, NY 14202

Sharon Devine
Executive Deputy Commissioner
New York State Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York 12243

Eric Schneiderman
Attorney General of the State of New York
New York State Department of Law
Justice Building, Empire State Plaza
Albany, New York 12224

VERIFICATION

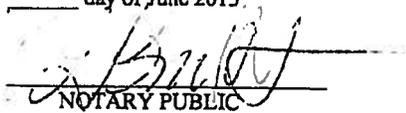
STATE OF NEW YORK)
COUNTY OF ERIE) ss:

YOUSIF KARAMALLA, being duly sworn, deposes and says:

I am the Petitioner-Plaintiff in this proceeding; and that the forgoing petition and complaint are true to my own knowledge except as to the matters stated to be alleged on information and belief, and as to those matters I believe the allegations to be true.

Dated: June 10, 2015

Sworn to before me this
_____ day of June 2015.



NOTARY PUBLIC



Yousif Karamalla

EMMA L. BUCKTHAL
NOTARY PUBLIC-STATE OF NEW YORK
No. 02BU6239421
Qualified in Erie County
My Commission Expires April 18, 2016



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 15, 2015

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

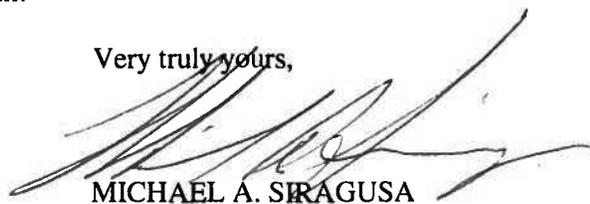
Dear Ms. McCarthy:

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>Trinity Park Housing Development Fund Company, Inc. v. County of Erie, et al.</i>
Document Received:	Verified Petition
Name of Claimant:	Trinity Park Housing Development Fund Company, Inc. c/o Delta Development of WNY, Inc. 525 Washington Street Buffalo, New York 14203
Claimant's attorney:	Vincent O. Hanley, Esq. Jaekle, Fleischmann & Mugel, LLP Avant Building - Suite 900 200 Delaware Avenue Buffalo, New York 14202-2107

Should you have any questions, please call.

Very truly yours,



MICHAEL A. SIRAGUSA
Erie County Attorney

MAS/dld

Enc.

Comm. 15D-5
Page 26 of 30

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

**TRINITY PARK HOUSING DEVELOPMENT
FUND COMPANY, INC.**

c/o Delta Development of WNY, Inc.
525 Washington St.
Buffalo, NY 14203

PETITIONER

Against

NOTICE OF PETITION

Index No. 2015-116
Filed: July 9, 2015

TOWN OF AURORA, NEW YORK

300 Gleed Avenue
East Aurora, New York 14052

**RICHARD L. DEAN, ASSESSOR
FOR THE TOWN OF AURORA**

300 Gleed Avenue
East Aurora, New York 14052

**EAST AURORA UNION FREE
SCHOOL DISTRICT**

430 Main Street
East Aurora, New York 14052

COUNTY OF ERIE

c/o Erie County Attorney
95 Franklin Street, Suite 1634
Buffalo, New York 14202

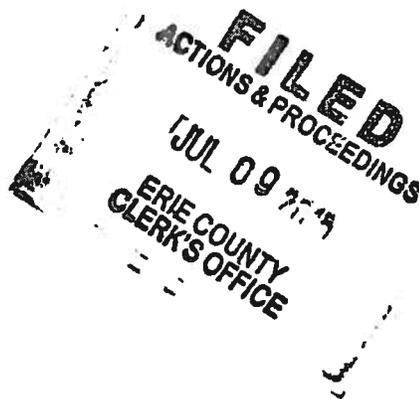
ERIE COUNTY LEGISLATURE

92 Franklin Street, 4th Floor
Buffalo, New York 14202

**JOSEPH L. MACIEJEWSKI,
DIRECTOR OF ERIE COUNTY
REALPROPERTY TAX SERVICES**

95 Franklin St - Room 100
Buffalo, New York 14202

RESPONDENTS.



SIRS:

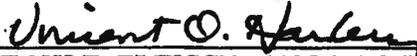
PLEASE TAKE NOTICE that, upon the annexed Verified Petition of Trinity Park Housing Development Company, Inc., an application will be made at a Term of this Court to be held at the Courthouse in the City of Buffalo, New York on the 19th day of August 2015 at 9:30 o'clock in the am ^{before the Hon James Dillon, J.S.C., Part 4, 92 Franklin St Buffalo 14202} or as soon thereafter as counsel can be heard, for: (1) review and reversal of the determinations of the Erie County Legislature which denied Petitioner's applications for correction of the tax rolls for the 2014-15 E. Aurora Union Free School District School Tax and the 2015 Town of Aurora/County of Erie Tax as they pertain to Petitioner's real property known as 710 Quaker Road, Town of Aurora, New York, Tax Parcel No. 175.05-1-16 ("Petitioner's Real Property"); (2) judgment declaring that Petitioner's Real Property was entitled to be assessed for the 2014 tax year in accordance with Real Property Tax Law Section 581-a; (3) judgment directing that the tax rolls for the 2014 tax year be corrected to reflect taxes based on an assessed value of Petitioner's Real Property calculated in accordance with Property Tax Law Section 581-a, and that the 2014-15 School Tax Bill and 2015 Town/County Tax Bill be canceled or adjusted accordingly; (4) judgment granting Petitioner prompt appropriate refunds of any 2014-15 School Taxes and 2015 Town/County Taxes pertaining to Petitioner's Real Property which have been paid by Petitioner, to the extent such refunds are determined to be due Petitioner as a result of the erroneous, excessive, improper, and unlawful assessments made with respect to Petitioner's Real Property; and (5) granting Petitioner such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE that demand is hereby made that Respondents County of Erie and Erie County Legislature certify and send to this Court within the time prescribed by CPLR Section 7804 all actions and proceedings of the Erie County Legislature in the matters described in the annexed Petition, along with certified copies of all applications, notices, documents, letters, and any other papers before or acted upon by said County Legislature, together with certified copies of all resolutions, determinations, decisions and opinions of said County Legislature and the minutes of all proceedings and hearings, and reports of all inspections and examinations and other matters and things considered or acted upon by said County Legislature in arriving at its determinations now under review, for the purpose of reviewing all of the acts and proceedings of the County Legislature in the matter of Petitioner's applications for correction of tax rolls and cancellation or adjustment of real property taxes.

PLEASE TAKE FURTHER NOTICE that any answer and supporting affidavits must be served upon the undersigned at least five (5) days before the return date hereof.

PLEASE TAKE FURTHER NOTICE that Petitioner designates Erie County as a place of trial because real property which is the subject of this proceeding is located in Erie County.

Dated: July 8, 2015



JAECKLE, FLEISCHMANN & MUGEL
By: Vincent O. Hanley, Esq.
Attorneys for Petitioner
Office and Post Office Address
Avant Building, Suite 900
200 Delaware Avenue
Buffalo, NY 14202
Attn: Vincent O. Hanley, Esq.
(716) 856-0600

TO: TOWN OF AURORA, NEW YORK

RICHARD L. DEAN, ASSESSOR FOR THE TOWN OF AURORA

EAST AURORA UNION FREE SCHOOL DISTRICT

COUNTY OF ERIE

ERIE COUNTY LEGISLATURE

**JOSEPH L. MACIEJEWSKI, DIRECTOR OF ERIE COUNTY
REAL PROPERTY TAX SERVICES**