ECLEG DEC14'15 AM 9:55

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH.
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

MEMORANDUM

TO: Karen McCarthy, Clerk, Erie County Legislature

FROM: Michelle M. Parker, First Assistant County Attorney

DATE: December 11, 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 ten (10) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Waleska Perez v. County of Erie, et al.
Carla Benton-Pringle, et al. v. County of Erie, et al.
Darchele Hall v. County of Erie, et al.
Nancy Wolstoncroft v. County of Erie
Charles Floyd v. Thomas Diina, et al.
Richard Bowden v. ECMC, et al.
Anthony Gerasimowicz v. County of Erie
Michael Hecht v. County of Erie, et al.
Jeffrey Bieler v. Sheriff Howard, et al.
Brian Muszynski v. County of Erie

MMP:dld
Attachments

Comm. 25D-11

95 FRANKLIN STREET – ROOM 1634, BUFFALO, NEW YORK 14202– PHONE (716) 858-2200 – FAX (716) 858-2231 (NOT FOR SERVICE)
WWW.ERIE.GOV

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

November 25, 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:	*Perez, Waleska v. David Zeigler and County of Erie*
Document Received:	Summons and Complaint
Name of Claimant:	Waleska Perez 144 Minnesota Avenue, Apt. 1 Buffalo, New York 14214
Claimant's attorney:	Anthony J. Zitnik, Jr., Esq. Law Office of J. Michael Hayes 69 Delaware Avenue, Suite 1111 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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

WALESKA PEREZ
144 Minnesota Avenue, Apt. 1
Buffalo, New York 14214

Plaintiff,

vs.

DAVID ZEIGLER
35 Montcalm Street
Buffalo, New York 14214

COUNTY OF ERIE
Rath Building
95 Franklin Street
Buffalo, New York 14202

Defendants.

SUMMONS

Index No:
Filed in the Erie
County Clerk's
Office on.: 813019/2015

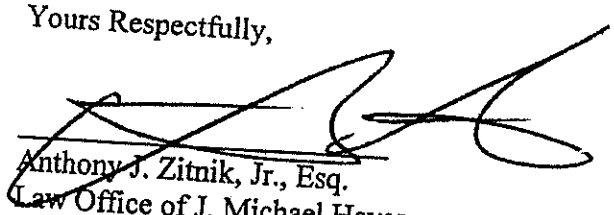
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action, and to serve a copy of your answer, or, if the summons is not served with a complaint, to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Erie County is designated as the place of trial on the basis of the residence of the Plaintiff who resides in Erie County, New York.

DATED: BUFFALO, NEW YORK
November 11, 2015

Yours Respectfully,



Anthony J. Zitnik, Jr., Esq.
Law Office of J. Michael Hayes
Attorneys for Plaintiff
Office and P.O. Address:
69 Delaware Avenue - Suite 1111
Buffalo, New York 14202
Telephone: (716) 852-1111

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

WALESKA PEREZ,

Plaintiff,

vs.

COMPLAINT

DAVID ZEIGLER and
COUNTY OF ERIE,

Index No.:

Defendants.

The Plaintiff, WALESKA PEREZ, by her attorney, ANTHONY J. ZITNIK, JR., for her complaint against the Defendants, DAVID ZEIGLER and COUNTY OF ERIE, herein alleges:

1. Presently and at all times hereinafter mentioned, Plaintiff, WALESKA PEREZ was a resident of the City of Buffalo, County of Erie and State of New York.

2. Upon information and belief, presently and at all times hereinafter mentioned, the Defendant, DAVID ZEIGLER, was a resident of the City of Buffalo, County of Erie and State of New York.

3. Upon information and belief, Defendant, COUNTY OF ERIE, is a municipal corporation existing by virtue of the Laws of the State of New York with offices for the transaction of business located in the County of Erie, State of New York.

4. Upon information and belief, at all times hereinafter mentioned, on or about February 1, 2014, the Defendant, DAVID ZEIGLER, was the owner and operator of the 1999 Ford motor vehicle bearing New York State license plate number GDB5490.

5. Upon information and belief, it will be claimed that on February 1, 2014 on Hertel Avenue at or about the intersection with Starin Avenue in the City of Buffalo, County of Erie and

State of New York, a motor vehicle owned and operated by the Defendant, DAVID ZEIGLER, came into contact with a vehicle owned and operated by Plaintiff, WALESKA PEREZ.

6. Upon information and belief, it will be claimed that the aforesaid incident was caused and contributed to due to the negligence of the Defendant, DAVID ZEIGLER.

7. Upon information and belief, Defendant, COUNTY OF ERIE claims a recovery right and/or "lien" out of any resolution in the above matter by virtue of medical expenses it claims to have incurred.

8. Upon information and belief, Defendant, COUNTY OF ERIE, is a necessary part of this action in that, for and before complete recovery may be accorded, the Defendant, COUNTY OF ERIE's claims for medical reimbursement must be considered, finalized, allocated and determined by way of compromise, settlement and/or Court determination and said Defendant has refused to join as part plaintiff.

9. Upon information and belief, this action falls within one or more of the exceptions enumerated in Article 16 of the CPLR and/or said article is inapplicable to the within action.

10. As a result of the foregoing, the Plaintiff, WALESKA PEREZ, sustained severe and serious personal injuries including a "serious injury" and economic loss in excess of "basic economic loss" as defined by Article 51 of the New York Insurance Reparations Law all to her damage in a sum in excess of the jurisdictional limits of the lower courts of this state.

WHEREFORE, Plaintiff, WALESKA PEREZ, demands judgment against the Defendants, DAVID ZEIGLER, and COUNTY OF ERIE, in a sum in excess of the jurisdictional limits of all lower courts in the State of New York together with the costs and disbursements, and such other and further relief as this Court deems just, proper and equitable.

DATED: BUFFALO, NEW YORK
November 11, 2015

Yours Respectfully,

Anthony J. Zitnik, Jr., Esq.
Law Office of J. Michael Hayes
Attorneys for Plaintiff
Office and P.O. Address:
69 Delaware Avenue - Suite 1111
Buffalo, New York 14202
Telephone: (716) 852-1111

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Erie

----------x

Waleska Perez

Plaintiff/Petitioner,

- against -

Index No. 813019/2015

David Zeigler and County of Erie

Defendant/Respondent.

----------x

NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

Parties represented by an attorney: An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: 11/11/15

Signature

J. Michael Hayes
Name

Law Offices of J. Michael Hayes
Firm Name

69 Delaware Avenue, Suite 1111
Address

Buffalo, NY 14202

(716) 852-1111
Phone

jmh@jmichaelhayes.com
E-Mail

To: County of Erie

95 Franklin St., Rath Bldg.

Buffalo, NY 14202

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

November 25, 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:	*Benton-Pringle, Carla and Pringle, Timothy v. City of Buffalo, County of Erie, et al.*
Document Received:	Notice of Claim
Name of Claimants:	Carla Benton-Pringle and Timothy Pringle 195 Bakos Boulevard Buffalo, New York 14211
Claimants; attorney:	Gary A. Joseph, Esq. Sarles, Frey & Joseph 5800 Main Street Williamsville, NY 14221

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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

NOTICE OF CLAIM

TO: CITY OF BUFFALO
1100 City Hall
Buffalo, New York 14202

COUNTY OF ERIE
COUNTY ATTORNEY
69 Delaware Avenue
Buffalo, New York 14202
Williamsville, New York 14221

This paper received at the
Erie County Attorney's Office
from Sean Czora on
the 24th day of November, 2015
at 10:47 a.m./p.m.
Assistant County Attorney

S.P.C.A.
205 Ensminger Road
Tonawanda, New York 14150

S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County
205 Ensminger Road
Tonawanda, New York 14150

S.P.C.A. a/k/a S.P.C.A. Serving Erie County
205 Ensminger Road
Tonawanda, New York 14150

Your Claimants, CARLA BENTON-PRINGLE and TIMOTHY PRINGLE, husband and wife, residing at 195 Bakos Boulevard, Buffalo, New York 14211, by and through their attorneys, Sarles, Frey & Joseph, 5800 Main Street, Williamsville, New York 14221, respectfully show your Honorable Body:

1. The Post Office address for CARLA BENTON-PRINGLE and TIMOTHY PRINGLE is 195 Bakos Boulevard, Buffalo, New York 14211.

2. The law firm of Sarles, Frey & Joseph is the attorney serving the Notice of Claim for the Claimants and has a Post Office address of 5800 Main Street, Williamsville, New York 14221.

3. That on August 29, 2015, at or about 1:30 p.m., the Claimant, CARLA BENTON-PRINGLE, was attending a free animal vaccination clinic with her dog which was being held on the ground floor of the garage located immediately behind the Broadway Market, 999 Broadway Street, Buffalo, New York 14212.

4. That on August 29, 2015, at or about 1:30 p.m., the Claimant, CARLA BENTON-PRINGLE, while standing in the above described garage, was attacked and bitten by another dog who was also attending said clinic with it's owner.

5. That upon information and belief, at or immediately before the Claimant was bitten, the above described dog had bitten other individuals including, but not limited to an S.P.C.A. dog handler and the clinic's veterinarian.

6. That on August 29, 2015, the area where the above described incident occurred was owned by and/or operated by and/or maintained by and/or inspected by and/or repaired by and/or the responsibility of the CITY OF BUFFALO, and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County and their respective agents, servants and/or employees.

7. That on August 29, 2015, the free vaccination clinic that the Claimant was attending was put on by and/or run by and/or hosted by and/or overseen by and/or the responsibility of and/or staffed by the CITY OF BUFFALO and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County and their respective agents, servants and/or employees.

8. That the incident described above was caused by and through the negligence of the CITY OF BUFFALO and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County, their respective agents, servants and/or employees in that the CITY OF BUFFALO and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County did not take all adequate, reasonable and necessary steps to provide for the safety of the Claimants.

9. That specifically, the CITY OF BUFFALO and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County, by and through their respective agents, servants and/or employees were negligent, careless and reckless as follows: by wrongfully and negligently allowing the dog in question to be at large, unrestrained, unmuzzled and unconfined knowing said dog to be of a fierce and vicious nature and likely to attack and bite any person such as the Claimant; by failing to remove said dog from the premises after being made aware of the dog's fierce and vicious nature having attacked and bitten two individuals prior to the Claimant; by failing to properly supervise and control said dog; by negligently allowing the Claimant near said dog knowing said dog to be of a fierce and vicious nature and likely to attack and bite the Claimant; by failing to use all reasonable care to protect the Claimant; by allowing the Claimant within reach of said dog; by allowing the Claimant to approach said dog knowing the dog to be of a fierce and vicious nature and likely to attack and bite the Claimant; by

failing to take adequate safeguards to prevent this incident from occurring; by failing to keep the subject dog away from the Claimant and her dog; by allowing said clinic to take place in the parking garage; by failing to set up the clinic in such a manner as to ensure the safety of those attending; by failing to run the clinic in a manner so as to ensure the safety of those attending; by running the clinic in a dangerous and hazardous manner; by failing to place adequate safeguards in place to protect the Claimant; by failing to ensure that the subject dog was removed from the premises immediately after biting others; by failing to warn the Claimant of the subject dog's vicious nature in that said dog was likely to attack and bite the Claimant; by allowing said clinic to take place without insuring that adequate safeguards where in place to prevent the subject dog from biting the Claimant; and by failing to otherwise act in a manner so as to insure the safety of the Claimant.

10. That as a result of the above incident, the Claimant, CARLA BENTON-PRINGLE, was caused to sustain serious personal injuries to various parts of her body including, but not limited to her right ankle, right leg and back as well various psychiatric and psychological injuries all of which have left her with permanent injuries, the extent of which is still to be determined.

11. That as a result of the above incident, the Claimant, CARLA BENTON-PRINGLE, has been caused to see various medical, hospital and doctors and is continuing to treat with her physicians.

12. That as a result of the above incident, the Claimant, CARLA BENTON-PRINGLE, has incurred in the past and will continue to incur in the future various medical, hospital and doctor bills and has and will continue to incur lost wages.

13. That as a result of the above incident, the Claimant, TIMOTHY PRINGLE, suffered loss of his loss of his wife's services and loss of consortium that has been incurred in the past and that will be incurred in the future.

14. That the CITY OF BUFFALO and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County had prior notice of the vicious and fierce nature of the subject dog and that said dog was likely to bite the Claimant.

15. That the Claimant, CARLA BENTON-PRINGLE, hereby makes claim against the CITY OF BUFFALO and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County for her personal injuries, permanency, pain and suffering, medical expenses and lost wages that have occurred in the past and that will be incurred in the future.

16. That the Claimant, TIMOTHY PRINGLE, hereby makes claim against the CITY OF BUFFALO and/or the COUNTY OF ERIE and/or the S.P.C.A. and/or the S.P.C.A. a/k/a Society for the Prevention of Cruelty to Animals Serving Erie County and/or the S.P.C.A. a/k/a S.P.C.A. Serving Erie County, for loss of his wife's services and loss of consortium that have been suffered in the past and that he will suffer in the future.

PLEASE TAKE NOTICE, that your Claimant, CARLA BENTON-PRINGLE, intends to commence an action for her personal injuries, permanency, pain and suffering, medical expenses and lost wages as set forth above if the above claim is not adjusted and

the Claimant, TIMOTHY PRINGLE, intends to commence an action for loss of his wife's services and loss of consortium as set forth above if the above claim is not adjusted.

DATED: November 23, 2018
Buffalo, New York

CARLA BENTON-PRINGLE

Sworn to before me this
23rd day of November, 2015

NOTARY PUBLIC

GARY ALAN JOSEPH
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Erie County
My Commission Expires March 30, 20

GARY ALAN JOSEPH
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Erie County
My Commission Expires March 30, 2019

TIMOTHY PRINGLE

Sworn to before me this
23rd day of November, 2015

NOTARY PUBLIC

GARY ALAN JOSEPH
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Erie County
My Commission Expires March 30, 2019

GARY A. JOSEPH

VERIFICATION

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

CARLA BENTON-PRINGLE, being duly sworn, deposes and says that she is the Claimant in this action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be on information and belief, and that as to those matters she believes it to be true.

CARLA BENTON-PRINGLE

Sworn to before me this
23rd day of November, 2015

NOTARY PUBLIC

GARY ALAN JOSEPH
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Erie County
My Commission Expires March 30, 2019

VERIFICATION

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

TIMOTHY PRINGLE, being duly sworn, deposes and says that he is the Claimant in this action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

TIMOTHY PRINGLE

Sworn to before me this
23rd day of November, 2015

NOTARY PUBLIC

GARY ALAN JOSEPH
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Erie County
My Commission Expires March 30, 2019

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

GARY A. JOSEPH, being duly sworn, deposes and says that he is the Attorney in the above action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

GARY A. JOSEPH

Sworn to before me this
23rd day of November, 2015

NOTARY PUBLIC

LORI MINARD
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 10-12-18

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

November 25, 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:	*Hall, Darchele K. v. GEICO Insurance Agency, Inc. and County of Erie*
Document Received:	Summons and Complaint
Name of Claimant:	Darcheke K. Hall 432 Stockbridge Avenue Buffalo, New York 14215
Claimant's attorney:	J. Michael Hayes, Esq. 69 Delaware Avenue, Suite 1111 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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DARCHELE K. HALL
432 Stockbridge Ave.
Buffalo, New York 14215,

Plaintiff,

vs.

GEICO INSURANCE AGENCY, INC.
c/o CT Corporation System
111 Eighth Avenue
New York, New York 10011

COUNTY OF ERIE
Rath Building
95 Franklin Street
Buffalo, New York 14202

Defendants.

SUMMONS

Index No.: _____

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action, and to serve a copy of your answer, or, if the summons is not served with a complaint, to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Erie County is designated as the place of trial on the basis of the residence of the Plaintiff who resides in Erie County, New York.

This document recieved at
ECDSS OFFICE OF COUNSEL
from NYS Process on the
2nd day of NOVEMBER, 2015
at _____ a.m. 3:09 p.m.
V. OPALKA
RECIEVED BY

DATED: BUFFALO, NEW YORK
November 18, 2015

Yours Respectfully,

J. Michael Hayes, Esq.
Law Office of J. Michael Hayes
Attorney for Plaintiff
Office and P.O. Address:
69 Delaware Avenue - Suite 1111
Buffalo, New York 14202
(716) 852-1111

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DARCHELE K. HALL,

Plaintiff,

vs.

GEICO INSURANCE AGENCY, INC. and
COUNTY OF ERIE,

Defendants.

COMPLAINT

Index No.: _____

Plaintiff above named, by his attorneys, Law Office of J. MICAHEL HAYES, for his complaint against the Defendant, GEICO INSURANCE AGENCY, INC. and COUNTY OF ERIE, herein alleges:

JURISDICTION

1. Presently and at all times hereinafter mentioned, Plaintiff, DARCHELE K. HALL, was a resident in the City of Buffalo, County of Erie and State of New York.

2. Upon information and belief, presently and at all times hereinafter mentioned, the Defendant, GEICO INSURANCE AGENCY, INC., was a foreign business corporation incorporated in the state of Maryland authorized to do business in the State of New York with offices for the transaction of business in the County of Erie and State of New York.

3. Upon information and belief, Defendant, COUNTY OF ERIE, is a municipal corporation existing by virtue of the Laws of the State of New York with offices for the transaction of business located in the County of Erie, State of New York.

4. Upon information and belief, presently and at all times hereinafter mentioned, the Defendant, GEICO INSURANCE AGENCY, INC., issued an insurance policy to Tionameche Brice

with the Policy Number 4084488164 (the "Policy") containing Uninsured Motorist Bodily Injury Protection (UM coverage) in the amount of $25,000/$50,000 per person/per claim.

FACTUAL PREDICATES

5. On or about January 30, 2015, Plaintiff, DARCHELLE K. HALL, was operating a motor vehicle owned and insured by Tionameche Brice. At the time of the accident, Plaintiff was stopped at a red light facing south on Humboldt Parkway at the intersection of East Ferry Street in the City of Buffalo, County of Erie and State of New York between two other vehicles. A fourth vehicle rear ended vehicle #3, which struck Plaintiff's vehicle #2, which struck vehicle #1 in front of him.

6. It was and is claimed that the incident aforesaid was caused due to the negligence of the unknown drive in vehicle #4 who fled the scene and remains unapprehended. A Police Report was filed.

7. Pursuant to the Contract of Insurance with Defendant, GEICO INSURANCE AGENCY, INC., said Defendant was place on notice of this potential with 90 days of the incident and was willing to present himself for an EUO or physical examination .

8. In said accident, Plaintiff, DARCHELE K. HALL. sustained severe and serious personal injures to his neck, spine and low back involving discs, nerves, vessels and other structures therein including a "serious injury" and basic economic loss in excess of basic economic loss as defined by Article 51 of the New York Insurance Law and including C4-5 protrusion; C5-6 herniation impinging on the left ventral spinal cord and encroaching on and narrowing the left lateral recess and the left neural foramen with associated hypertrophy of the uncovertebral joints bilaterally and bilateral foraminal stenoses; C6-7 annular tear and herniation; straightening of cervical lordosis;

disc bulge and straightening of lumbar lordosis. Board certified orthopedic surgeon Dr. Cameron B. Huckell diagnosed our client having sustained significant injuries to his spine and opined that Mr. Hall has a relative indication for C5-6 and C6-7 discectomy and fusion.

9. Plaintiff's injuries are permanent in nature and may require surgical intervention with all the risks attended thereto. Plaintiff, DARCHELE K. HALL, may be forced to expend sums of money for medical care and treatment.

10. The Plaintiff's injuries are not covered under any liability portion of any policy and the tortfeasor's policy is unknown.

11. The COUNTY OF ERIE provides medical coverage for the Plaintiff as he is on Medicaid and upon information and belief, provides/may provide medical expense coverage.

12. Defendant, COUNTY OF ERIE, claims a right of assignment and rights of subrogation including the right to initiate a separate lawsuit to recover its medical expenditures on behalf of Plaintiff, DARCHELE K. HALL.

13. Upon information and belief, the Defendant, COUNTY OF ERIE, is a necessary party to this action in that, for and before complete resolution may be accorded, the Defendant, COUNTY OF ERIE's, claims for Medicaid medical reimbursement must be considered, finalized, allocated and determined by way of compromise, settlement and/or Court determination and said Defendant has refused to join as a party plaintiff.

14. Upon information and belief, this action falls within one or more of the exceptions enumerated in Article 16 of the CPLR and/or said article is inapplicable to the within action.

FIRST CAUSE OF ACTION

15. Defendant, GEICO INSURANCE AGENCY, INC., was presented with Plaintiff's

notice of the potential claim for UM benefits on or about February 12, 2015. Defendant, GEICO INSURANCE AGENCY, INC., was at all times kept appraised of the progress of Plaintiff, DARCHELE K. HALL, as concerns his injuries.

16. As the liability portion of the Policy provides no coverage, there remains Uninsured Motorist Bodily Injury Policy limits of $25,000/$50,000.

17. Plaintiff has forwarded copies of medical records with the request that GEICO INSURANCE AGENCY, INC. review and advise if it required any additional information in order to negotiate and/or resolve this claim under the UM policy.

18. Defendant, GEICO INSURANCE AGENCY, INC., has refused to make reasonable payment to Plaintiff, DARCHELE K. HALL, and has only offered nuisance value for Plaintiff's serious spinal injuries for which he is a surgical candidate. Defendant's refusal to offer the full UM coverage provisions of the aforementioned insurance contract within any reasonable time periods, thereby making it in breach of the insurance contract.

19. By reason of the foregoing, the Plaintiff, DARCHELE K. HALL, has been damaged to a sum in excess of the jurisdictional limits of the lower courts of the State of New York that would otherwise have jurisdiction of the action and are entitled to the full UM benefits under the contract/policy issued by the Defendant, GEICO INSURANCE AGENCY, INC.

JURY DEMAND

20. The plaintiffs hereby demand a jury trial.

WHEREFORE, Plaintiff, DARCHELE K. HALL, demands judgment against the Defendant, GEICO INSURANCE AGENCY, INC. and COUNTY OF ERIE, for a sum in excess of the jurisdictional limits of the lower courts of the State of New York that would otherwise have

jurisdiction of the action, together with such other and further relief this Court deems just, proper and equitable, including costs, disbursements, interest and attorney's fees.

DATED: Buffalo, New York
November 18, 2015

Yours Respectfully,

J. Michael Hayes, Esq.
Law Office of J. Michael Hayes
Attorney for Plaintiff
Office and P.O. Address:
69 Delaware Avenue, Suite 1111
Buffalo, New York 14202
(716) 852-1111

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

DARCHELE K. HALL

Plaintiff/Petitioner,

- against -

GEICO INSURANCE AGENCY, INC. and COUNTY OF ERIE

Defendant/Respondent.

Index No. 813399/2015

NOTICE OF COMMENCEMENT OF ACTION SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated: 11/18/2015

(Signature)

J. Michael Hayes, Esq. (Name)

Law Office of J. Michael Hayes (Firm Name)

69 Delaware Avenue, Suite 1111 (Address)
Buffalo, New York 14202

(716) 852-1111 (Phone)

jmh@jmichaelhayes.com (E-Mail)

To: GEICO Insurance Agency
County of Erie

4/8/11

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

December 1, 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:	*Wolstoncroft, Nancy v. County of Erie - DSS CPS*
Document Received:	Division of Human Rights Charge of Discrimination
Name of Claimant:	Nancy Wolstoncroft 104 Louvaine Drive Buffalo, New York 14223
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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of NANCY WOLSTONCROFT, Complainant, v. ERIE COUNTY, DEPARTMENT OF SOCIAL SERVICES, Respondent.	VERIFIED COMPLAINT Pursuant to Executive Law, Article 15 Case No. **10178483**

Federal Charge No. 16GB600539

I, Nancy Wolstoncroft, residing at 104 Louvaine Dr., Buffalo, NY, 14223, charge the above named respondent, whose address is 95 Franklin Street, Buffalo, NY, 14202-3959 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of age.

Date most recent or continuing discrimination took place is 10/22/2015.

The allegations are:

1. I am 74 years old (DOB: 10/21/1941). Because of this, I have been subject to unlawful discriminatory actions.

2. I was hired by the above named respondent in 1987 and currently hold the job title of Senior Caseworker at 478 Main Street in Buffalo New York where I am a member of respondents Foster & Adoptive Services Training Team. My annual performance evaluations have been satisfactory.

3. Beginning around January 2010 and continuing to date, respondent has targeted me for differential treatment due to my age in an effort to end my employment because of my age. For example, in 2010, respondent transferred me to my current position and failed to provide me with any training. I believe this was done in an attempt to force me to leave my employment.

4. More recently, I was issued two disciplinary write ups within a five month period although I had received no previous disciplinary actions during the past twenty five years of my employment. In addition, my annual performance evaluations have been satisfactory. The first hearing was held on 05/19/2015 because my supervisor J. Ryan falsely accused me of insubordination, which could be grounds for dismissal. Mr. Ryan falsely alleged I had not signed the day-in calendar and had thrown it on the ground. Respondent did not allow me to provide witnesses in order to defend myself. Prior to this hearing, J. Ryan had subjected me to differential treatment due to my age by implying I was not doing my work, repeatedly making

negative comments about my capability, failing to provide me with requested direction, and following me to the point of stalking me, among other things.

5. On 10/22/2015, a hearing was held because my supervisor Karyn William falsely alleged I had been insubordinate and disruptive to others during a 20 second meeting I had with her in her office on 09/29/2015. Her charges were not true. On that day, I had requested a meeting with her supervisor because Ms. William had been rejecting the majority of my closings, which added to my workload. I believe respondent is targeting me for differential treatment, to include unwarranted discipline, in an effort terminate my employment or force me to quit because of my age.

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of age, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating the Age Discrimination in Employment Act (ADEA) as amended (covers ages 40 years of age or older in employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

Nancy Wolstoncroft

Nancy Wolstoncroft

STATE OF NEW YORK)
COUNTY OF) SS:

Nancy Wolstoncroft, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

Nancy Wolstoncroft

Subscribed and sworn to
before me this 17 day
of November ,2015

Signature of Notary Public

BEVERLY A. FRESCHOLTZ
Notary Public, State of New York
No. 01FR6187237
Qualified in Erie County
My Commission Expires May 19, 2016

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

December 1, 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:	*Floyd, Charles v. Tina M. Stanford, Thomas Diina, Superintendent*
Document Received:	Verified Petition
Name of Petitioner:	Charles Floyd #144686 Erie County Correctional Facility 11581 Walden Avenue Alden, New York 14004
Petitioner's attorney:	Petitioner 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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

Supreme Court
County of Erie
State of New York

In the Matter of the Application of:
Charles Floyd, Petitioner,
for a writ of Habeas Corpus to Inquire
Into the Cause of Detention of
Charles Floyd,
Petitioner Pro Se

-V-

Timothy B. Howard,
Respondent

Petition For Writ of
Habeas Corpus
Index #2015-00194

To the Honorable Justices of the Supreme Court of the State of New York Your Petitioner respectfully alleges and shows that:

1. Charles Floyd, the Petitioner makes application herein on his own behalf for a Writ of Habeas Corpus. That the place where said Charles Floyd, Petitioner is imprisoned and restrained of his liberty is the Erie County Correctional Facility, 11581 Walden Avenue, in the town of Alden in the County of Erie, State of New York.
2. The officer by whom he is imprisoned an restrained is Timothy B. Howard
3. No Court or Judge of the United States has exclusive jurisdiction to releas the said Charles Floyd, Petitioner, released.
4. The cause or pretense of the imprisonment and restraint of said Charles Floyd, Petitioner, according to the best knowledge and belief of Petitioner is being held on a violation of parole and that the warrant was never properly executed it is to the best of my knowledge and belief that I am being confined illegally.
5. The imprisonment and restraint of said Charles Floyd, petitioner is by virtue of mandate a copy of which is hereto annexed and marked as Exhibits "A" "A(2)"

6. The imprisonment an restraint of said Charles Floyd, petitioner is illegal. When the parole warrant executed, you will be detained in a local facility or detention center an may not be bailed. Within three days (five days if you are out of state) of the lodging of the warrant, you will be served with both the notice of violation an the violation of release report. The notice of violation, states your rights an the date, place an time of your preliminary hearing and your final hearing. The violation of release report notifies you of the charges against you. Within fifteen days of the lodging of the warrant a preliminary hearing must be scheduled unless you wave such hearing. if at the preliminary hearing it is found that there is not probable cause to believe that you have violated a condition of release in an important respect, the warrant will be cancelled and you will be restored to parole supervision. if probable cause is found at the preliminary hearing or if you wave the preliminary hearing, an area supervisor or member of the parole board will review your case an determine whether to declare you delinquent an order a final hearing or to restore you to supervision... Now on July 9, 2015

I WAS Served with Notice of Violation, wit
The WARRANT Number being 685924.
When I Signed for The Notice of Violation
ON July 6, 2015. WARRANT # 685924 WAS
The only WARRANT Number on The Top of
The Notice of Violation Form; AS Well AS ON
The bottom of The ~~Violation~~ (C.N.F) Notice of Violation
Form, Where I Signed Requesting to be
Assigned A Attorney... Now on July 9, 2015
A preliminary hearing in This matter was
Started AN Adjourned, so That I could
obtain Counsel. Parole officer K. Tornabene
Stated to hearing officer D. Drumsta
That She doesn't understand why I am
Requesting Counsel, when my parole is Not
Revoked. However A Adjourement was
issued, under WARRANT Number 685924.
See (Exhibit B) hearing officer Drumsta.

If my parole, According to parole
officer Tornabene was No longer Revoked
on July 9, 2015. That would ~~the~~ mean That The
WARRANT WAS Lifted AN Cancelled. But
When I went back to my New prelimi-
nary, Which was Schedule For July
30, 2015 A New WARRANT had been
issued. under WARRANT Number
686007... So Sometime on or
Around or About The 9th of July
2015, WARRANT 686007 was issued

Against me. Which I was never properly served the Notice of Violation. or served the Notice of Violation. or the Violation of Release Report "period". Atleast not under warrant #686007... Which mean that I am being held illegally and that the preliminary hearing that was held on me, on July 30, 2015 by hearing officer Robbyer under warrant #686007 is None-Void and illegal. See Exhibit-D.

I have been being detained on false warrant, since about the 9th of July 2015; And I say false because I was never served and have yet to be served a Notice of Violation, for warrant #686007. As of todays date, which is August 24, 2015.

7. No previous application has been made for the writ herein asked for.

8. No appeal has been taken from any order or judgement in any action or proceeding against said Charles Floyd, Petitioner whereby he has been imprisoned an restrained of his liberty.

Wherein Petitioner prays that a Writ of Habeas Corpus directed to said Timothy B. Howard be issued for the purpose of inquiring into the cause of the imprisonment and restraint of said Charles Floyd, Petitioner and delivering him therefrom (C.N.F) ~~[illegible]~~ pursuant to the statute in such case made and provided

Dated: August 24, 2015

Charles Floyd

Petitioner Pro Se Charles Floyd

Sworn to before me this 24th day of August 2015

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 2017

Chr T. Coughlin

Notary Public

(5)

County of Erie
Supreme Court
Charles Floyd
Petitioner Pro Se

-V-

Timothy B. Howard
Respondent

Notice of Motion to Proceed in Forma Pauperis

PLEASE TAKE NOTICE that upon the annexed affidavit of Charles Floyd, the Petitioner herein, duly sworn to the _____ day of _____, 2015, that a motion will be made at a motion term of this Court on the _____ day of _____, 2015 at 9:00 o'clock in the forenoon or as soon thereafter as Petitioner can be heard, for an Order permitting Petitioner to proceed in Forma Pauperis, including waiver of fees, assignment of counsel, furnishing Petitioner a copy of the stenographic transcript of Preliminary Violation Hearing and all Proceedings of this action without fees necessary to prosecute this action and it has merit, upon the ground that said Petitioner has insufficient income and property to enable him to pay the cost and expenses to prosecute said petition if granted permission to prosecute it before this court, and that said inability would [redacted] result in a denial of Petitioner's rights under the New York State and United States Constitutions, and that Petitioner further moves this Court for any such other and further relief as this Court may deem just and proper.

Dated: August 24, 2015

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 2017

Charles Floyd
Petitioner Pro Se Charles Floyd

Sworn to before me
on this 24th day of August, 2015.

NOTARY PUBLIC

State of New York
County of Erie
Supreme Court

Charles Floyd
Petitioner

-V-

Timothy B. Howard
Respondent

Affidavit in Support of Motion to Proceed in Forma Pauperis

State of New York }
County of Erie } ss:

I, Charles Floyd, the petitioner herein being duly sworn, depose and say that I make this affidavit is in support of the attached motion to proceed in Forma Pauperis. I am currently incarcerated at Erie County Correctional Facility, 11581 Walden Avenue Town of Alden, Erie County, New York.

I am commencing an proceeding pursuant to petition for writ of habeas Corpus the facts of which are contained in the annexed affidavit is support of said motion. This application is made pursuant to New York State Civil Practice Laws and Regulations Section 1101(d) for an Order allowing Petitioner to proceed as a poor person in this proceeding, assigning counsel if appropriate and CR waiving the necessary fees, on the grounds that petitioner is indigent and unable to afford said fees, costs and expenses required to prosecute this proceeding. This proceeding is not frivolous and as the supporting papers demonstrate, has meritorious basis in law and fact.

The Petitioner does not own any real property, assets, bank accounts, certificates, deposits, stocks, bonds or anything of value which might assist me in paying for this action and or proceeding.

The Petitioner inmate account at the Erie County Correctional Facility currently contains zero dollars and zero cents.

There Petitioner says no other persons exist to my knowledge who might benefit from the outcome of the proceeding herein, who might therefore be able to assist in paying for the cost of said proceeding.

Unless granted Pauperis, status, Petitioner will be unable to prosecute the proceeding herein.

The Petitioner has made no prior application for the relief sought herein to any Court.

The Petitioner believes that he is entitled to the relief sought herein.

WHEREFORE, the undersigned Petitioner respectfully prays for an Order permitting Petitioner to proceed as a poor person in the action herein, assigning counsel if appropriate, and waiving the necessary fees costs and expenses required to prosecute this proceeding and for any other and further relief as this Court may deem just and proper.

Dated: August 24, 2015

Charles Floyd

Petitioner Pro Se Charles Floyd

Sworn to before me on
this 24th day of August, 2015.

Christ T. Co

Notary Public

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 2017

State of New York
County of Erie
Supreme Court

Charles Floyd
Petitioner

-V-

Timothy B. Howard
Respondent

Affidavit in Support of
Application to CPLR 1101(d)
(Request for waiver of filling fee)
Index #
NYSID # ~~08932860R~~
04355669H

State of New York }
County of Erie } SS:

I, Charles Floyd, being duly sworn, hereby declare as follows:

1. I am the Petitioner in the above entitled proceeding I am a inmate at the local Erie County Correctional Facility and I submit this affidavit in support of my application for request of a waiver of filling fee pussuant to CPLR 1101

. I currently receive no income nor do I receive any correctional facility wages.

. I do not own any valuable property (other than miscellaneous personal property).

. I have no savings, property assets, or income other than as set forth herein.

. I am unable to pay the fee necessary to prosecute this procedure.

. No other person who is able to pay the filling fee has a beneficial interest in the result this proceeding.

The facts of my case are described in my claim and other papers filed in the ourt.

I have made no prior request for this relief in this case.

. My date of birth is 9-20-62

. My NYSID number is ~~08932860R~~
04355669H

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 2017

Dated: August 24, 2015

Charles Floyd

Petitioner Pro Se Charles Floyd

Sworn to before me this
24th day of August, 2015.

NOTARY PUBLIC

Authorization

I, Charles Floyd NYSID number ~~08932860R~~ 04355669-H, request and authorize the agency holding me in custody to send to the Clerk of the Court certified copies of the correction facility trust fund account statement (or the institutional equivalen for the past six months.

This authorization is furnished in connection with the above entitled case and shall apply to any agency into whose custody I may be transferred.

Charles Floyd

Charles Floyd

Sworn to before me this
24th day of August 2015.

Christopher T. Coughlin

Notary Public

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec 23, 2017

Affidavit of Service

State of New York
County of Erie } ss:

I, Charles Floyd being duly sworn, depose and say that I have on this August day 24, 2015 forwarded via the United States Postal Service copies of the following documents: Petition for writ of habeas corpus 3 pages along with Exhibits "A" - "E" 7 pages. Notice of Motion to Proceed in forma Pauperis 1 page. Affidavit in Support of Motion to proceed in forma pauperis 2 pages. Affidavit in Support Application to CPLR 1101(d) 1 page. And also Authorization form 1 page.

To the offices of:
Oliver C. Young Esq.
Supreme Court of State of
New York Legal Staff
92 Franklin Street
Buffalo, New York 14202

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec 23, 2017

Charles Floyd
Petitioner Pro Se Charles Floyd
11581 Walden Avenue
Erie County Correctional Facility
Alden, New York 14004

Dated: August 24, 2015

Sworn to before me this 24th day of August, 2015.
Chris T. Coughlin
NOTARY PUBLIC

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

December 1, 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:	*Bowden, Richard v. Erie County Medical Center, et al.*
Document Received:	Complaint
Name of Claimant:	Richard Bowden 13-B-0137 Wyoming Correctional Facility PO Box 501 Attica, New York 14011
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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

5CV6565W

Revised 03/06 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization, or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

UNITED STATES DISTRICT COURT FILED SEP 11 2015 MICHAEL J. ROEMER, CLERK WESTERN DISTRICT OF N.Y.

1. RICHARD BOWDEN , # 13-B-0137
2.

JURY TRIAL DEMANDED

-VS-

B. Full Name(s) of Defendant(s) NOTE: *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. CITY OF BUFFALO
2. MICHAEL J. ACQUINO (POLICE OFFICER)
3. MARK HAMILTON (POLICE OFFICER)
4. ERIE COUNTY MEDICAL CENTER
5. JANE DOE #1 (DOCTOR- ECHC)
6. JANE DOE #2 (NURSE-ECHC)
7. JANE DOE #3 (NURSE-ECHC)

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: *To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Richard Bowden, #13-B-0137

Present Place of Confinement & Address: Wyoming Correctional Facility, P.O. BOX 501, Attica, New York 14011

Name and Prisoner Number of Plaintiff:

Present Place of Confinement & Address:

ADDITIONAL DEFENDANTS

Name of Defendant: ERIE COUNTY MEDICAL CENTER

Official Position of Defendant: Medical Provider

Defendant Sued In: Individual Capacity

Address of Defendant: 462 Grider Street, Buffalo, New York 14215

Name of Defendant: Jane Doe #1

Official Position of Defendant: Medical Doctor

Defendant Sued In: Individual Capacity

Address of defendant: ERIE COUNTY HOLDING CENTER, 10 Delware Avenue, Buffalo, New York 14202

Name of Defendant: Jane Doe #2

Official Position of Defendant: Nurse

Defendant Sued In: Individual Capacity

Address of Defendant: ERIE COUNTY HOLDING CENTER,10 Delware Avenue, Buffalo, New York 14202

Name of Defendant: Jane Doe #3

Official Position of Defendant: Nurse

Defendant Sued In: Individual Capacity

Address of Defendant: ERIE COUNTY HOLDING CENTER, 10 Delware Avenue, Buffalo, New York 14202

Disposition (check the statements which apply):

____ Dismissed (check the box which indicates why it was dismissed):

____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

____ By court for failure to exhaust administrative remedies;

____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

____ By court due to your voluntary withdrawal of claim;

____ Judgment upon motion or after trial entered for

____ plaintiff

____ defendant.

---

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- Religion
- Free Speech
- Due Process
- Equal Protection
- Access to the Courts
- False Arrest
- Excessive Force
- Failure to Protect
- Search & Seizure
- Malicious Prosecution
- Denial of Medical Treatment
- Right to Counsel

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far a practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to **42 U.S.C. § 1997e(a)**, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

13. While Plaintiff and Houston was talking a Buffalo City Police Department cruiser stopped, and from inside the cruiser asked Plaintiff and Houston if either of them was Chicago (Plaintiff assumed that Chicago was merely a name the officers were using as an excuse to stop and harass him.)

14. The officers proceeded to drive slowly down the street, then stopped, then started backing the car up. Plaintiff felt that the officers stopping to question he and Houston were merely a tactic of harassment.

15. The officers began speaking again to them. Plaintiff decided he would leave. At no time did either of the officers order Plaintiff not to leave, or that he or Houston were under arrest for anything.

16. The officers exited their car and began walking over. Officer Aquino attempted to grab Plaintiff's arm. Not knowing his true intentions and knowing there was no warrants for his arrest, he wondered why the officer was grabbing him so aggressively.

17. Plaintiff turned and began to run away. In his pocket he carried a concealed weapon, a small handgun, because the neighborhood was dangerous, and in 2003 his cousin was murdered and threats were also made against his life. The gun he carried was illegal. Plaintiff have never been charged with assault on another individual, though in the past he had been charged with resisting arrest. Plaintiff was actively employed as a plumber at the time.

18. While running, Plaintiff pulled the handgun from his pocket and threw it away from him upon the ground.

19. Officer Acquino tackled Plaintiff and he fell to the ground. Though he fell quite hard, the fall did not break his arm.

20. Officer Acquino then began punching the Plaintiff over his body, including to the head while he was defenseless, not struggling, nor resisting in any way.

21. Officer Mark Hamilton joined in on the assault upon the Plaintiff. He began kicking and stomping on him.

22. During this assault Plaintiff's arm was broken in two places. He had a swollen face and bruises over his body from the beating. Because the broken arm was such a severe injury, medical staff at both Erie County Medical Center and at Erie County holding Center completely ignored the bruises, beliving they were too minor.

C. Inadequate Medical Care-ECHC

30. Though Dr. Snyder had stated immediate surgery was necessary, Defendants officers Acquino and Hamilton transferred Plaintiff to the Erie County Holding Center, when due to the extent of the injuries he should not have been released from the Erie County Medical Center.

31. Plaintiff, despite his injuries, were placed/housed in general population instead of in the infirmary at ECHC and was there held before and after his surgery.

32. Defendant Dr. "Jane Doe" #1 who oversaw patients at ECHC did not visit with Plaintiff until after his third day there. She stated that Plaintiff needed immediate surgery (The same as Dr. Snyder had stated three days prior.) Dr. Jane Doe #1 stated she would put Plaintiff in for an immediate surgery,however a surgery did not occur until two days later.

33. Dr. Jane Does #1 stated that the semi-cast treatment that had been provided to Plaintiff was improper treatment for that type of severe injury. Doctor Jane Doe further stated Plaintiff should have never been released from ECMC in that condition.

34. Defendant "Jane Doe" #2 was a care providing nurse for the Plaintiff for the five days before the actual surgery at ECHC. She was a nurse who delivered medication to him. She received his complaints about medication being ineffective. The medications failed to relieve the extreme pain. The combination of medication led to hazzardous conditions such as dizziness, fatique, no bowel movement, lack of sleep, headaches, emotional and mental distress, all in excess of the original injury, and during a time he was not allowed to be in facility infirmary for observation, and prevented from making any meaningful complaints that might bring relief.

35. Defendant "Jane Doe" #3 was a nurse that also worked beside, and in conjunction with Jane Doe #2. Three days after injury, and after receiving complaints that the prescribed medications were not working to curve the pain and was causing horrible side effects, revealed that the combination of medication prescribed to him was an improper combination. Nevertheless, Plaintiff was left on the medication for an additional two (2) days and up until the actual surgery occurred. Plaintiff was allowed to suffer in pain with additional side-effects for the complete 5 days before surgery.

A. **Second Claim:** Defendant, Michael J. Acquino, City of Buffalo Police Officer, used unnecessary excessive force against Plaintiff and assaulted him, under color of state law causing injuries, delayed treatment, interferred with access to treatment, disregarded condition.

The constitutional basis for this claim under 42 U.S.C. sec. 1983 civil rights violations is the first, fourth, fifth and fourteenth amendment of the U.S. constitution.

The relief Plaintiff is seeking for claim:

A. One million dollars compensatory damages ($1,000,000.00).

B. One and a half million dollars punitive damages ($1,500,000,00).

Any deemed exhaustion requirement has been fulfilled.

A. **Third Claim:** Defendant, Mark Hamilton, City of Buffalo Police Officer, used unnecessary and excessive force against Plaintiff and assaulted him causing severe injuries, under color of state law, delayed treatment, interferred with access to treatment, disregarded condition.

The constitutional basis for this claim under 42 U.S.C. sec. 1983 civil rights violations is the first, fourth, fifth, and fourteenth amendment of the U.S. constitution.

The relief Plaintiff is seeking for claim:

A. One million dollars compensatory damages ($1,000,000.00).

B. One and half million dollars punitive damages ($1,500,000.00).

Any deemed exhaustion requirement has been fulfilled.

A. **Fourth Claim:** Erie County Medical Center, Defendant, failed to provide Plaintiff with necessary and adequate medical treatment and denied him immediate surgery and primary care upon an severe, serious injury under color of state law, after diagnosing the immediate need.

The constitutional basis for this claim under 42 U.S.C. 1983 civil violation is the fourteenth amendment of the U.S. constitution.

The relief Plaintiff seeks for claim is:

A. One million dollars compensatory damages ($1,000,000.00).

B. One and a half million dollars punitive damages ($1,500,000.00).

Any deemed exhaustion requirement has been fulfilled.

Before he actually had surgery; mislead Plaintiff when he'd hoped to make proper and legitimate complaints about lack of proper treatment; was deliberately indifferent to his injuries, condition and situation; under color of law.

The constitution basis for this claim under 42 U.S.C. sec. 1983 civil rights violation is the fourteenth amendment, eighth amendment of the U.S. constitution.

The relief Plaintiff is seeking for claim:

A. One million dollars in compensatory damages ($1,000,000.00).

B. One and a half million in punitive damages ($1,500,000.00).

Any deemed exhausting requirement has been fulfilled.

9. RELIEF SOUGHT

Plaintiff has been disfigured by injury and will require plastic surgery to repair scars that are seven inches long, one inch wide on one side; and five inches long, three-fourth inches wide on the opposite side. Plaintiff was an employed plumber who now have very limited use of his arm. A plumber who once used 90 pound jackhammer, other heavy equipment on his job details, even smaller tools. Now he feels pain in arm for even modest use of it. Feels sharp pain when arm is turned in certain angles. He presently takes ant-flammatory medications for pain. And medication for relief of arthritis due to injury caused by defendants.

Claim One- One million dollars compensatory requested.
One and half million in punitive requested.

Claim Two- One million dollars compensatory requested.
One and half million in punitive requested.

Claim Three- One million dollars compensatory requested.
One and half million in punitive requested.

Claim Four- One million dollars in compensatory requested.
One and half million in punitive requested.

Claim Five- One million dollars in compensatory requested.
One and half million in punitive requested.

Claim Six- One million dollars in compensatory requested.
One and half million in punitive requested.

Claim Seven- One million dollars in compensatory requested.
One and half million in punitive requested.

E X H I B I T S

E X H I B I T S

E X H I B I T S

ERIE COUNTY MEDICAL CENTER
HEALTHCARE NETWORK

462 Grider Street Buffalo, New York 14215

DEPARTMENT OF IMAGING SERVICES

PT NAME: BOWDEN,RICHARD E
MRN: M000554077
DOB: 06/12/1981 Sex: M
Service Date: 09/21/12 Time: 1732

Requisition No: 12-0095929
Procedures:
0921-0084 ERAD/ER HAND LEFT COMPLETE 73130
0921-0085 ERAD/ER WRIST LEFT COMPLETE 73110
0921-0086 ERAD/ER FOREARM LEFT 73090

Pt Type: DEP ER Pt Location: ER
Attending:
Referring: SNYDER, RYAN E MD, (RES)
Primary Care: UNKNOWN PRIMARY CARE PROVIDER
Account Number: V00003515829
REPORT NO: 0924-0409

Left hand RADIOGRAPHS

CLINICAL HISTORY: Left hand pain after injury in altercation

COMPARISON: None

TECHNIQUE. Three views. PA lateral and oblique views of the left hand are submitted

FINDINGS: There is no fracture, dislocation or other bone or joint abnormality.

IMPRESSION: Normal left hand.

Left wrist RADIOGRAPHS

CLINICAL HISTORY: Left wrist pain after injury in altercation

COMPARISON: None

TECHNIQUE.Three views. PA, lateral and oblique views of the left wrist are submitted.

FINDINGS: There is no fracture, dislocation or bone or joint abnormality

IMPRESSION: Normal left wrist.

Left forearm RADIOGRAPHS

CLINICAL HISTORY. Left forearm pain after injury in altercation.

COMPARISON: None

TECHNIQUE. Two views. A and lateral views of the left forearm are submitted.

FINDINGS: There are transverse fractures of the distal left radius and ulna. The distal radial fragment is volar angulated. The distal ulnar fragment is minimally dorsally angulated.

ERIE COUNTY MEDICAL CENTER
HEALTHCARE NETWORK

462 Grider Street Buffalo, New York 14215

DEPARTMENT OF IMAGING SERVICES

PT NAME: BOWDEN,RICHARD E
MRN: M000554077
DOB: 06/12/1981 Sex: M
Service Date: 09/26/12 Time: 0926
Requisition No. 12-0097574
Procedures
0926-0077 RAD/XR FOREARM LEFT 73090

Pt Type: REG CLI Pt Location: ORTHO
Attending: ROHRBACHER,BERNHARD J MD
Referring: ROHRBACHER, BERNHARD J MD
Primary Care: MOSCATI,RONALD M MD
Account Number: V00003517832
REPORT NO: 0928-0159

X-ray of left forearm
Two views
Reduction and cast
Fiberglass cast is seen around left forearm Fracture of distal radius and ulna Fracture fragments are in partial alignment. No fracture of the proximal and middle shaft of the radius and ulna.

Interpretation
Reduction and cast for fracture of distal radius and ulna fracture fragments are in partial alignment
No significant change since this x-ray of September 21, 2012

Films reviewed and dictated by: SHANTIKUMAR D BEDMUTHA MBBS 09/28/12 1043
Signed by: <Electronically signed by SHANTIKUMAR D BEDMUTHA MBBS>
Sign date / time: 09/28/12 1043

09/28/12 1043 XXX

Copies To. ROHRBACHER,BERNHARD J MD
Printed:

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

December 2, 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:	*Gerasimowicz, Anthony T. v. County of Erie*
Document Received:	Division of Human Rights Charge of Discrimination
Name of Claimant:	Anthony T. Gerasimowicz 193 Willett Street Buffalo, New York 14206
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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of ANTHONY T. GERASIMOWICZ, Complainant, v. THE ERIE COUNTY HOLDING CENTER, Respondent.	VERIFIED COMPLAINT Pursuant to Executive Law, Article 15 Case No. **10178652**

Federal Charge No. 16GB600665

I, Anthony T. Gerasimowicz, residing at 193 Willett St., Buffalo, NY, 14206, charge the above named respondent, whose address is 40 Delaware Ave., Buffalo, NY, 14202 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of sex, opposed discrimination/retaliation.

Date most recent or continuing discrimination took place is 10/30/2015.

See attached complaint.

New York State Division of Human Rights
Complaint Form

RECEIVED
NOV 24 2015
NYSDHR BUFFALO
REGIONAL OFFICE

CONTACT INFORMATION

My contact information:

Name: Anthony T. Gerasimowicz

Address: 193 Willett Street Apt or Floor #:

City: Buffalo State: NY Zip: 14206

REGULATED AREAS

I believe I was discriminated against in the area of:

- ☒ Employment
- ☐ Education
- ☐ Volunteer firefighting
- ☐ Apprentice Training
- ☐ Boycotting/Blacklisting
- ☐ Credit
- ☐ Public Accommodations *(Restaurants, stores, hotels, movie theaters amusement parks, etc.)*
- ☐ Housing
- ☐ Commercial Space
- ☐ Labor Union, Employment Agencies
- ☐ Internship

I am filing a complaint against:

Company or Other Name: The Erie County Holding Center

Address: 40 Delaware Avenue

City: Buffalo State: NY Zip: 14202

Telephone Number: 716 (area code) 858 7818

Individual people who discriminated against me:

Name: Crystal Quinn Name: Angela Payne

Title: Assistant Director of Nursing Title: Director of Nursing

DATE OF DISCRIMINATION

The most recent act of discrimination happened on: 10 (month) 30 (day) 2015 (year)

BASIS OF DISCRIMINATION

Please tell us why you were discriminated against by checking one or more of the boxes below.

You do not need to provide information for every type of discrimination on this list. Before you check a box, make sure you are checking it only if you believe it was a reason for the discrimination. Please look at the list on Page 1 for an explanation of each type of discrimination.

Please note: Some types of discrimination on this list do not apply to all of the regulated areas listed on Page 3. (For example, Conviction Record applies only to Employment and Credit complaints, and Familial Status is a basis only in Housing and Credit complaints). These exceptions are listed next to the types of discrimination below.

I believe I was discriminated against because of my:

☐ **Age** *(Does not apply to Public Accommodations)* Date of Birth:	☐ **Genetic Predisposition** *(Employment only)* Please specify:
☐ **Arrest Record** *(Only for Employment, Licensing, and Credit)* Please specify:	☐ **Marital Status** Please specify:
☐ **Conviction Record** *(Employment and Credit only)* Please specify:	☐ **Military Status:** Please specify:
☐ **Creed / Religion** Please specify:	☐ **National Origin** Please specify:
☐ **Disability** Please specify:	☐ **Race/Color or Ethnicity** Please specify:
☐ **Domestic Violence Victim Status:** *(Employment only)* Please specify:	☒ **Sex** Please specify: ☐ **Female** ☒ **Male** ☐ **Pregnancy** ☐ **Sexual Harassment**
☐ **Familial Status** *(Housing and Credit only)* Please specify:	☐ **Sexual Orientation** Please specify:

☒ **Retaliation** *(if you filed a discrimination case before, or helped someone else with a discrimination case, or reported discrimination due to race, sex, or any other category listed above)*

Please specify: Was hired by former Nursing Administrator who was promoted, I had a letter of reference from Sen. Tim Kennedy

Before you turn to the next page, please check this list to make sure that you provided information ***only*** for the type of discrimination that relates to your complaint.

EMPLOYMENT OR INTERNSHIP DISCRIMINATION

Please answer the questions on this page only if you were discriminated against in the area of employment or internship. If not, turn to the next page.

How many employees does this company have?

a) 1-3 b) 4-14 c) 15 or more d) 20 or more e) Don't know

Are you currently working for the company?

☐ **Yes**

Date of hire: (05 / 26 / 2015) (Month / day / year) What is your job title? R.N.

☒ **No**

Last day of work: (10 / 30 / 2015) (Month / day / year) What was your job title? _____

☐ **I was not hired by the company**

Date of application: (_____ / _____ / _____) (Month / day / year)

ACTS OF DISCRIMINATION

What did the person/company you are complaining against do? Please check all that apply.

☐ Refused to hire me

☒ Fired me / laid me off

☐ Did not call me back after a lay-off

☐ Demoted me

☐ Suspended me

☐ Sexually harassed me

☒ Harassed or intimidated me (other than sexual harassment)

☒ Denied me training

☐ Denied me a promotion or pay raise

☐ Denied me leave time or other benefits

☐ Paid me a lower salary than other workers in my same title

☐ Gave me different or worse job duties than other workers in my same title

☐ Denied me an accommodation for my disability

☐ Denied me an accommodation for my religious practices

☒ Gave me a disciplinary notice or negative performance evaluation

☐ Other: _____

DESCRIPTION OF DISCRIMINATION - for all complaints *(Public Accommodation, Employment, Education, Housing, and all other regulated areas listed on Page 3)*

Please tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory.
PLEASE TYPE OR PRINT CLEARLY.

I was hired 5/26/2015 & was suppose to have mandetory safety training which I never recieved. This training was suppose to take place before I started working there for my safety, safety of others & proper job performance in lieu of working in a Maximum Security Jail for the 1st time. I made "minor errors" & rather than train me I was just targeted for termination from shortly after I was hired.

Because I didn't have the training I recieved a few "Verbal Write Ups" that were used to fire me, all trumped up to sound like negligence where my employers were the negligent ones.

1) I was written up in my 1st month for being late 1-4 minutes 6 times in 5 weeks. Due to no safety training I didn't know start time was 06:45 AM & just told 07:00 when I started.

2) I took a photo of a sheriff's van while on lunch outside the building. I was written up for this when I was on public property, on my own time & outside the facility's property.

3) I was written up for insubordination & using company time for writing "Don't Get Arrested" on an Inmate's cast. It was his 1st arrest & I was just trying to guide him as while treating he expressed an interest in nursing.

4) I was accussed of purposely writing noted under another nurse's name when in fact all I did was relieve her for the bathroom & then ammend the notes to indicate they were written by me.

If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. ***PLEASE DO NOT WRITE ON THE BACK OF THIS FORM.***

I was the only Permanently hired male Nurse in the building.

They also accused me of telling a female pregnant inmate when she was going to the hospital. This never accurred & when the Union asked for proof of paper work they were unable to produce it.

NOTARIZATION OF THE COMPLAINT

Based on the information contained in this form, I charge the above-named Respondent with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment), or filing my housing/credit complaint with HUD under Title VIII of the Federal Fair Housing Act, as amended (covers acts of discrimination in housing),as applicable. This complaint will protect your rights under Federal Law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law and/or to accept this complaint on behalf of the U.S. Department of Housing and Urban Development for review and additional filing by them, subject to the statutory limitations contained the in aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

Sign your full legal name

Subscribed and sworn before me
This 10th day of Nov , 20 15

Signature of Notary Public

County: Erie Commission expires:

CHRISTINE M. CEDERMAN
Notary Public - State of New York
No. 01CE4965061
Qualified in Erie County
My Commission Expires April 16, 2019

Please note: Once this form is notarized and returned to the Division, it becomes a legal document and an official complaint with the Division of Human rights. After the Division accepts your complaint, this form will be sent to the company or person(s) whom you are accusing of discrimination.

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

December 2, 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:	*Hecht, Michael v. County of Erie, Erie County District Attorney's Office, et al.*
Document Received:	Notice of Claim
Name of Claimant:	Michael Hecht 170 Baker Street Jamestown, New York 14701
Claimant's attorney:	Glenn Pincus, Esq. Hogan Willig 2410 North Forest Road, Suite 301 Getzville, New York 14068

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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

STATE OF NEW YORK : COUNTY OF ERIE

In the Matter of the Claim of

MICHAEL HECHT,

Claimant,

NOTICE OF CLAIM
ERIE COUNTY IND. NO. 01536-2010

TO: **COUNTY OF ERIE**
ERIE COUNTY DISTRICT ATTORNEY'S OFFICE,
FRANK A. SEDITA, III, DISTRICT ATTORNEY
STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION ("DOCCS")
DIVISION OF PAROLE
BOARD OF PAROLE, TINA M. STANFORD, CHAIRWOMAN,

PLEASE TAKE NOTICE the claimant herein hereby makes a claim and demand against the COUNTY OF ERIE, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, FRANK A. SEDITA, III, DISTRICT ATTORNEY, STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, and the DIVISION OF PAROLE BOARD OF PAROLE, TINA M. STANFORD, CHAIRWOMAN, pursuant to § 50-e of the General Municipal law, as follows:

1. The post office address of the Claimant is 170 Baker Street, Jamestown, NY 14701.

2. The attorneys for the Claimant are HOGANWILLIG, whose post office address is 2410 North Forest Road, Suite 301, Amherst, New York 14068 and whose telephone number is (716) 636-7600.

3. The nature of the claim of MICHAEL HECHT ("Claimant") is for wrongful confinement and malicious prosecution and other damages sustained due to the negligence,

HOGANWILLIG
Attorneys at Law
2410 NORTH FOREST ROAD | SUITE 301 | AMHERST, NEW YORK 14068
Phone: 716.636.7600 | Toll Free: 800.636.5255 | Fax: 716.636.7606 | www.hoganwillig.com

recklessness and/or carelessness of the COUNTY OF ERIE and the STATE OF NEW YORK, as further set forth below.

4. Upon information and belief, the ERIE COUNTY DISTRICT ATTORNEY'S OFFICE is an administrative department of the COUNTY OF ERIE, State of New York.

5. At all times relevant to this Notice of Claim, the District Attorney of Erie County was, and continues to be, FRANK A. SEDITA, III.

6. Upon information and belief, the New York State Division of Parole and Board of Parole are administrative Departments of the Department of Corrections and Community Services ("DOCCS") which is an administrative Department of the State of New York. Upon information and belief, the current Acting Commissioner of DOCCS is Anthony J. Annucci

7. Upon information and belief, at all times relevant to this Notice of Claim, the Chairperson of the New York State Board of Parole was, and continues to be, TINA M. STANFORD.

Claimant's Malicious Prosecution and Wrongful Sentencing as a Second Felony Offender

8. The time and the place where such claim occurred commenced on or about between September 15, 2010 and October 26, 2010, upon the District Attorney's filing of a "Statement Pursuant to CPL 400.21" dated September 15, 2010 with Supreme Court, Erie County, Erie County Courthouse, Part 13, 25 Delaware Avenue, Buffalo, NY 14202, Hon. M. William Boller, Acting Supreme Court Justice, seeking a finding upon sentencing on October 26, 2010 that Claimant was then a Second Felony Offender and should be sentenced thereas pursuant to section 70.06 of the Penal Law. *See*, Exhibit A, submitted herewith.

HOGANWILLIG
Attorneys at Law
2410 NORTH FOREST ROAD | SUITE 301 | AMHERST, NEW YORK 14068
Phone: 716.636.7600 | Toll Free: 800.636.5255 | Fax: 716.636.7606 | www.hoganwillig.com

9. The Claim ACCRUED on August 18, 2015, the date on which Claimant was released from custody by DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

10. The CPL 400.21 Statement (Exhibit A) was issued pursuant to the explicit authority of and in the name of "Frank A. Sedita, III, Erie County District Attorney," and "By: Holly P. Tucker, Assistant District Attorney of Counsel."

11. MICHAEL HECHT ("Claimant") had previously entered a guilty plea in the case at bar on July 27, 2010 to one count of burglary in the third degree in violation of PL 140.20, a non-violent class D felony offense committed on or about September 29, 2009. *See*, Exhibit A.

12. The CPL 400.21 Statement submitted to Supreme Court on or prior to Claimant's sentencing date of October 26, 2010 was dated September 15, 2010. It stated on its face that Defendant/Claimant had been "*previously* convicted" of two felonies on "1/25/10" (*i.e.*, January 25, 2010). Exhibit A (emphasis supplied).

13. Said convictions on January 25, 2010 were certainly "previous" to the date of the CPL 400.21 Statement, and to Claimant's scheduled sentencing on October 26, 2010 – but they were *not* "previous" to the date of the commission of the crime for which Claimant was being sentenced which was, as set forth in the Statement, September 29, 2009 as would be required for sentencing as a Second Felony Offender pursuant to PL 70.06.

14. Section 70.06 of the Penal Law defines that a prior conviction qualifies as a "predicate felony conviction," and thus authorizes a defendant to be sentenced as a "Second Felony Offender," only upon application of certain statutory criteria, including:

> Sentence upon such prior conviction *must* have been imposed before commission of the present felony. PL 70.06(1)(b)(ii) (emphasis supplied).

HOGAN WILLIG
Attorneys at Law
2410 NORTH FOREST ROAD | SUITE 301 | AMHERST, NEW YORK 14068
Phone: 716.636.7600 | Toll Free: 800.636.5255 | Fax: 716.636.7606 | www.hoganwillig.com

15. Therefore, for Claimant to have been lawfully sentenced pursuant to PL 70.06 as a second felony offender, Claimant's prior sentences upon his purported "predicate felony convictions" (which were entered on January 25, 2010) would have been required to have been imposed prior to Claimant's commission of the "Second Felony Offense" (which occurred on September 29, 2009). Clearly this did not occur.

16. Therefore, whether or not defendant at sentencing on October 26, 2010 "controverted" the allegations set forth in the Statement Pursuant to CPL 400.21, there is no question that

> the uncontroverted allegations in such statement are not sufficient to support a finding that the defendant has been subjected to such a predicate felony conviction. CPL 400.21(5).

17. Under such circumstances, the Court "*must* proceed to hold a hearing." CPL 400.21(5). This the Court failed to do.

18. At sentencing proceedings held October 26, 2010 the Assistant District Attorney commenced sentencing proceedings by introducing the matter and declaring to the Court, Hon. M. William Boller, JSC, that "the defendant must be sentenced as a second felony offender pursuant to CPL 400.21." *See*, transcript of 10/26/2010 *Sentencing Proceedings*, submitted herewith as Exhibit B, p. 2.

19. The Court agreed, and declared,

> I find that the defendant has been subjected to a predicate felony conviction pursuant to CPL section 400.21(4) and will now proceed to sentence the defendant in accord with the provisions of section 70.06 of the Penal Law. Exhibit B, *Sentencing Proceedings*, p. 4.

20. The Court proceeded to impose an indefinite sentence of two to four years, consecutive to the defendant's previously imposed sentence of parole supervision at the Willard Drug Treatment Campus. The Court added that he intended for the sentence to run consecutively

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to Defendant's prior sentence of ninety days to Parole Supervision at Willard Drug Treatment Campus, previously imposed on January 25, 2010 pursuant to CPL 400.91. The Assistant District Attorney argued that not to do so would be "absolutely ridiculous."

21. The Court added, "No. You get no credit as far as I'm concerned. . . . You come back in front of me after you get out of prison, I'll put you back in. You don't get any break from me as far as I'm concerned." Exhibit B, *Sentencing Proceedings*, p. 5.

22. Claimant submits that the Erie County District Attorney's arguments that Claimant had a predicate felony conviction and was therefore required to be sentenced as a Second Felony Offender were false, were made with reckless disregard for the truth, demonstrated malicious prosecution, were grossly negligent, and caused Claimant irreparable harm by virtue of being wrongfully incarcerated as a second felony offender for a longer period of time than would have otherwise been the case, causing loss of liberty, mental anguish, lost income, and pain and suffering.

23. Claimant submits that Supreme Court's findings that Claimant had a predicate felony conviction and was therefore required to be sentenced as a Second Felony Offender were false, were made with reckless disregard for the truth, demonstrated malicious prosecution, were grossly negligent, and caused Claimant irreparable harm by virtue of being wrongfully incarcerated as a second felony offender for a longer period of time than would have otherwise been the case, causing loss of liberty, mental anguish, lost income, and pain and suffering.

Defendant's Malicious Prosecution and Wrongful Confinement as a Parole Violator

24. Shortly after Claimant was unlawfully prosecuted, adjudicated, and sentenced as a "Second Felony Offender," he received a "*Notice of Final Declaration of Delinquency By Board of Parole*" dated "11/1/10" (November 1, 2010), submitted herewith as Exhibit C.

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25. The Notice declared falsely, with reckless disregard for the truth, and with gross negligence that Claimant's (new)

> sentence was based on the conviction for an *offense that occurred* while you were subject to Parole's supervision on your previous sentence. . . [B]ased on the new conviction . . . the Board of Parole has issued a final declaration of delinquency with a delinquency date of 10/26/10. *See, Notice of Final Declaration of Delinquency*, Exhibit C. (emphasis supplied).

26. The Board of Parole therefore, with reckless disregard for the truth and with gross negligence incorrectly established a "parole delinquency date" for Claimant of October 26, 2010, causing him to be wrongfully confined as a "Parole Violator" for a longer period of time than would have otherwise been the case, causing loss of liberty, mental anguish, lost income, and pain and suffering.

27. The Parole Board continued to reject and disregard Claimant's requests to correct its gross error and falsely, with reckless disregard for the truth, and with gross negligence continued to insist Claimant was a "parole violator." For example the Board declared in a Parole "Risk Assessment" form with a "Screening Date" of 8/14/2013 that Claimant's "Prison Admission Status" for his conviction was "Parole Violator" and that his "Prison Release Status" was "PV [parole violator] new term." *See, Risk Assessment*, submitted herewith as Exhibit D. This assessment contributed to the Board's denials of Claimant's applications for parole.

28. The Division of Parole and Parole Board therefore caused Claimant irreparable harm by virtue of being wrongfully incarcerated as a "Parole Violator" for a longer period of time than would have otherwise been the case, causing loss of liberty, mental anguish, lost income, and pain and suffering.

29. For the same reason that Claimant should not have been declared a Second Felony Offender in this case, *viz*: he committed the instant crime in 2009, nearly four months <u>*before*</u> he

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was sentenced to parole supervision for his purported "predicate" felony, he also could not lawfully be found to be a parole violator.

30. Claimant committed the instant offense on or about September 29, 2009, nearly four months *before* he was sentenced on January 25, 2010 pursuant to PL 400.91 to a term of "Parole Supervision" at Willard Drug Treatment Campus. His crime committed in September, 2009 could not possibly violate a term of parole supervision which was not imposed until January, 2010.

31. The Division of Parole's assignment of a "parole delinquency date" and declaration that Claimant was a "Parole Violator" interrupted the calculation of Claimant's prison time by operation of law. *See*, PL 70.40(3)(a). As a result Claimant was deprived of liberty without due process of law.

32. Claimant submits that the Division of Parole's findings establishing that Claimant had a Parole Delinquency Date and was a Parole Violator were false, were made with reckless disregard for the truth, demonstrated malicious prosecution, were grossly negligent, and caused Claimant irreparable harm by virtue of being wrongfully incarcerated as a parole violator for a longer period of time than would have otherwise been the case causing loss of liberty, mental anguish, lost income, and pain and suffering.

33. Claimant attended a Parole Board Interview on October 22, 2013 before Commissioners Thompson, Crangle and Stanford. *See*, Transcript of Parole Board Interview, October 22, 2013, pp. 1-3, submitted herewith as Exhibit E.

34. At the hearing Claimant attempted to explain that he had been incorrectly classified as a parole violator:

> Q (By Comm. Stanford): You violated parole while in the community on that charge?

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> A (By Claimant): No, ma'am. I was at Willard and was given a pre-indictment plea on this charge . . . .
> Q: While you were on Willard you took a plea to this crime that was committed before you went into that sentence?
> A: Yes, ma'am. This crime happened before I even got sentenced on the first one. Transcript of Parole Interview, Exhibit E, p.2 (of 9).

35. The Commissioners, however, failed to grasp that Claimant was trying to explain (accurately) that he was not a parole violator at all.

36. Claimant's assertions that "this crime . . . was committed before [he] went into that sentence [to parole supervision at Willard]" and that "[t]his crime [the alleged parole violation] happened before I even got sentenced on the first one," established, if true, not merely that Claimant deserved to be released on parole, but that he was not a "parole violator" at all.

37. Claimant's testimony was both (1) correct, and (2) easily verifiable by the Parole Board had any one of them, or a staff member, attempted to verify Claimant's assertion that he never violated his original sentence to parole supervision.

38. Notwithstanding, the Parole Board denied parole.

39. The Commissioners' actions were made with reckless disregard for the truth, demonstrated malicious prosecution, were grossly negligent, and caused Claimant irreparable harm by virtue of being wrongfully incarcerated as a parole violator for a longer period of time than would have otherwise been the case, causing loss of liberty, mental anguish, lost income, and pain and suffering.

40. Claimant was released from state custody by DOCCS on August 18, 2015. The instant claim accrued on that date.

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Conclusions.

41. The Claimant MICHAEL HECHT was denied of his right to liberty as a result of the reckless, grossly negligent, careless and unlawful actions of the ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, COUNTY OF ERIE.

42. The Claimant MICHAEL HECHT was wrongfully incarcerated and confined and served additional imprisonment as a result of this malicious prosecution by the ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, COUNTY OF ERIE.

43. The Claimant MICHAEL HECHT was denied of his right to liberty as a result of the reckless, grossly negligent, careless and unlawful actions of the NEW YORK STATE SUPREME COURT, ERIE COUNTY.

44. The Claimant MICHAEL HECHT was wrongfully incarcerated and confined and served additional imprisonment as a result of this conduct by the NEW YORK STATE SUPREME COURT, ERIE COUNTY.

45. The Claimant MICHAEL HECHT was denied of his right to liberty as a result of the reckless, grossly negligent, careless and unlawful actions of the NEW YORK STATE BOARD OF PAROLE, DEPARTMENT OF CORECTIONS AND COMMUNITY SUPERVISION.

46. The Claimant MICHAEL HECHT was wrongfully incarcerated and confined and served additional imprisonment as a result of this malicious prosecution by the NEW YORK STATE BOARD OF PAROLE, DEPARTMENT OF CORECTIONS AND COMMUNITY SUPERVISION.

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47. This Claim ACCRUED on August 18, 2015, the date on which Claimant was released from custody by DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

48. This Notice of Claim is being filed within ninety days after the Claim accrued, as required by law. Gen. Mun. Law section 50-e.

49. MICHAEL HECHT presents this claim to be paid by COUNTY OF ERIE and STATE OF NEW YORK in an amount to be determined and as yet unknown within thirty days of service.

PLEASE TAKE FURTHER NOTICE that by reason of the premises, in default of the COUNTY OF ERIE, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, FRANK A. SEDITA, III, DISTRICT ATTORNEY, STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, and the DIVISION OF PAROLE BOARD OF PAROLE, TINA M. STANFORD, CHAIRWOMAN, to pay Claimant the sum to be determined within the time limited for compliance with this demand pursuant to statutes in such cases made and provided, the Claimant intends to commence action against the COUNTY OF ERIE, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, FRANK A. SEDITA, III, DISTRICT ATTORNEY, STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, and the DIVISION OF PAROLE BOARD OF PAROLE, TINA M. STANFORD, CHAIRWOMAN, to recover said damages with interest and the costs of this action.

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Dated: Amherst, New York
November 12, 2015

HOGANWILLIG, PLLC

Glenn Pincus, Esq.
Attorneys for Plaintiff
2410 North Forest Road, Suite 301
Amherst, New York 14068
Telephone: (716) 636-7600
gpincus@hoganwillig.com

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

MICHAEL HECHT, being duly sworn, deposes and says that he is the Claimant in the foregoing claim, that he has read the foregoing Claim and know the contents thereof; that the same is true to his knowledge except as to those materials alleged to be upon information and belief as to those matters, he believes them to be true.

Michael Hecht
MICHAEL HECHT

Sworn to before this
12 day of November, 2015

Stephanie M. Sweeney
Notary Public – State of New York

STEPHANIE M. SWEENEY
Notary Public, State of New York
No. 01SW6219249
Qualified in Erie County
Commission Expires 3/22/18

{H1111733.2}

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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

December 9, 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:	*Bieler, Jeffrey v. Sheriff Howard, Anthony J. Annucci and Brandon Smith*
Document Received:	Order to Show Cause
Name of Claimant:	Jeffrey Biehler 14-B-1524 Greene Correctional Facility PO Box 975 Coxackie, New York 12051-0975
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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION OF
JEFFREY BIELER, #14-B-1524

Petitioner,

-vs-

TIMOTHY B. HOWARD, SHERIFF OF ERIE COUNTY, **ANTHONY J. ANNUCCI,** COMMISSIONER, NYS DEPT. OF CORRECTIONS & COMMUNITY SUPERVISION, **BRANDON SMITH,** SUPERINTENDENT, GREENE CORRECTIONAL FACILITY,

Respondents.

ORDER TO SHOW CAUSE

RETURN ON PAPERS ONLY

Index No. I-2015-00202

SUPREME COURT, ERIE COUNTY

HON. PAULA L. FEROLETO, JUSTICE PRESIDING

APPEARANCES:

Petitioner, Pro Se
JEFFREY BIELER, #14-B-1524

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 October 18, 2015, with accompanying exhibits,

LET RESPONDENTS SHOW CAUSE at a Special Term of the Supreme Court to be held in and for the County of Erie on **JANUARY 12, 2016** before the **HON. JOHN L. MICHALSKI,** Acting Justice of the Supreme Court, in Part 18 at 25 Franklin Street, 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, the petition and any supporting papers by ordinary First-Class Mail upon the named respondents, Timothy B. Howard, Anthony J. Annucci and Brandon Smith on or before **December 8, 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 Attorney General at the Buffalo Regional Office, Main Place Towers, 350 Main Street, Suite 300, 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 Justice Michalski, and any party receiving an adjournment shall notify the other party or parties of said adjourned date; and it is further

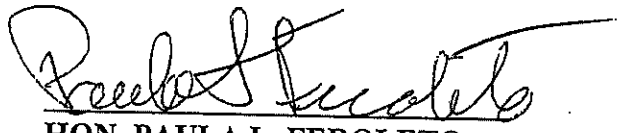
ORDERED that it is the petitioner's responsibility to:

(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.

(b) Submit the original proof of service to the chambers of the Hon. John L. 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
November 24, 2015

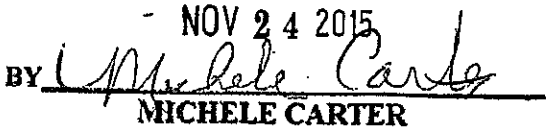


HON. PAULA L. FEROLETO
Justice of the Supreme Court

GRANTED:

GRANTED

NOV 24 2015

BY 

MICHELE CARTER
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ERIE: CRIMINAL TERM PART 24

The People of the State of New York	:	
Jeffrey Bieler, Pro Se,	:	**NOTICE OF PETITION**
Petitioner,	:	
For a Judgement Pursuant to article 78	:	
Of the Civil Practice Law and Rules.	:	
Timothy B. Howard, Sheriff - Erie County,	:	
Diane H. Hulford, Coordinator,	:	**R.J.I. No.:** _____
New York State Department of Corrections	:	**Index No.:** 2015-00202
And Community Supervision, and	:	**Din. No.: 14-B-1524**
Brandon J. Smith, Superintendent,	:	**NYSID: 057344787K**
Greene Correction Facility	:	
Respondent.	:	

PERSONAL:

Herein, verified on 30 Day of October 5, 2015, an application will be made to this Court to be held At Supreme Court - Erie County Court Bldg., 25 Delaware Avenue - Buffalo, New York 14202 at 9:00 o'clock in the forenoon or as soon thereafter as counsel may be heard for a judgement.

PLEASE TAKE NOTICE, that upon the annexed petition of Jeffrey Bieler, petitioner Under, Article 78 of the C.P.L.R.:

1. I, Jeffrey Bieler, am an inmate in the custody of the Superintendent of Greene Correctional Facility located in Greene County. The Cause of my custody is my conviction of D.W.I./ VTL - 1192(3) Class E Felony. The grounds for this petition are that; Petitioners Jail Time has been miscalculated and the Petitioner would be held past the C.R. date of August 13, 2016, which infact, should be May 6, 2016. "89 days are missing from Petitioners Jail Time Computation Sheet".

2. On May 14, 2013, Petitioner was taken from the Sardina Courthouse, Erie County. And was sent to the Erie County Holding Center - Buffalo, New York. From; May 14, 2013 til' June 16, 2013. Being **"in custody" and "officially detained" for 33 days.** Was then transferred to, Erie County Correctional Facility in Alden, New York. Petitioner spent from; June 16, 2013 til' January 14, 2014, **"in custody" and "officially detained" in here for 123 days.** Released out on Bail, 1/14/2014.

3. Petitioner while "in custody" and "officially detained" in between both Facilities, accumulated a total of 245 Day's of Jail Time Credit, towards his State Sentence.

4. Petitioner was arrested on April 16, 2013, in the Town of Sardina, Erie County on the above stated charges and was released to the bail on January 14, 2014, with the Index No.: 2013-0975.

5. Petitioner appeared before the Hon. Russell P.Buscaglia, J.S.C., of the Supreme Court - Erie County - New York on May 14, 2014. And was found guilty by non-jury trial of: VTL 1192(3) - D.W. I. A Class E Felony, and was scheduled for sentencing on May 14, 2014, in which petitioner was sentenced to 1 1/3 to 4 yrs., State Incarceration.

6. Despite the above stated sentence, petitioner was only credited with a total of "125 Day's of Jail Time Credit to his state court sentence on May 14, 2014, Index No.: 2013-0975.

7. Petitioner was transferred to Wendy State Correctional Facility; Elmira Correctional Facility; then down to; Ulster Correctional Facility for classification.

8. Petitioner's legal computation sheet was only crediting the petitioner with only 125 Day's of Jail Time Credit.

9. Petitioner wrote letters to the following agencies, (see: enclosed copies) stating that, petitioners jail time credit was wrong and needed to be adjusted to the correct amount of Days owed to the petitioner.

10. Petitioner received facility mail, a new - Jail Time Computation Sheet, with only 31 Days' added onto the petitioners Jail Time credit. This now brings the Jail time credit to 156 day's, which still needs to be adjusted with an additional; 89 Day's "in custody' and "officially detained" Days' still owed to this petitioner.

11. Petitioner wrote to the Clerk of the Court, Erie County requesting to know about the missing Jail Time Credit, which had only accredited petitioner with a 125 Day's, then increased

to 156 Day's. To date, no response has not - been given nor any corrections made to the in custody and officially detained time accumulated for petitioner.

12. Petitioner argues that, the Day's of Jail Time Credit of in custody and officially detained are still very inaccurate. And as stated previously, Petitioner should be credited with the entire 245 Day's Jail Time Credit with the in custody and officially detained time spent between Erie County Holding Center and the Alden Correctional Facility. Cited under, Penal Law § 70.30(3)(b).

13. CPL § 430.20(1), **"When a sentence of imprisonment is pronounced, or when the sentence consists of a fine and the court has directed that the defendant be imprisoned until it is satisfied, the defendant must be forthwith be committed to the custody of the appropriate public servant and detained until the sentence is complied with".** ***Avers v. Coughlin,*** 72 N.Y.2d 346 (N.Y. 1988).

14. Credit for prior custody. A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in "official detention" to the date the sentence commences. Under **18 U.S.C. § 3585(b)**.

WHEREFORE, this Court should:

Restore to petitioner in all aspects the status of "in custody" and "official detention" of 89 Days Jail Time Credited to petitioners state sentence, changing his Conditional release date from: August 13, 2016 to the official Conditional release date to; May 16, 2016.

PLEASE TAKE FURTHER NOTICE, that an answer and supporting affidavits, if any, shall be served at least five days before the aforesaid date of hearing, and that a transcript of the proceeding challenged herein shall be served with said answer and affidavits.

Dated: October 15, 2015

Greene County , New York

Sworn to before me this

18th Day of October, 2015

L. Irving Reed

Notary Public

L. Irving Reed

October 14, 2015

Mr. Jeffrey Bieler, 14-B-1524

Greene Correctional Facility

Post Office Box 975

Coxsackie, New York 12051-0975

L. IRVING REED
Notary Public - State of New York
No. 01RE6128673
Qualified in Albany County
My Comm. Expires Dec. 2, 2018

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

December 10, 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:	*Muszynski, Brian v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Brian Muszynski 1418 East Park Road Grand Island, New York 14072
Claimant's attorney:	Michele A. Braun, Esq. Brown Chiari, LLP 5775 Broadway Lancaster, New York 14086

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.

95 FRANKLIN STREET, ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE: (716) 858-2200 – WWW.ERIE.GOV

STATE OF NEW YORK :
SUPREME COURT : COUNTY OF

BRIAN MUSZYNSKI,

Claimant

vs.

NOTICE OF CLAIM

COUNTY OF ERIE,

Respondent

TO: Michael A. Siragusa, Esq.
ERIE COUNTY ATTORNEY
95 Franklin St. Room 1634
Buffalo, New York 14202

To whom it may concern:

PLEASE TAKE NOTICE, that the undersigned hereby makes a claim against the COUNTY OF ERIE and submits the following in compliance with the applicable statutes of the State of New York.

1. The herein is BRIAN M. MUSZYNSKI, who resides at 1418 East Park Road, Grand Island, NY 14072.

2. The herein is represented by the law firm of BROWN CHIARI LLP, 5775 Broadway, Lancaster, New York 14086-2360.The subject claim is for personal injuries and medical expenses sustained by reason of injury to Claimant BRIAN M. MUSZYNSKI.

3. The incident giving rise to these damages occurred on or about September 25, 2015 when Claimant received a telephone call from the TB Clinic located at 608 William Street

Buffalo NY advising that a sputum sample obtained from him at Women and Children's Hospital of Buffalo Lung Clinic on August 7, 2015 and sent for testing to the Erie County Department of Health and/or Tuberculosis Clinic, in the City of Buffalo, County of Erie, and State of New York had tested positive for Tuberculosis.

4. The said damages for which claim is hereby made arose in the following manner, to wit:

> Claimant BRIAN M. MUSZYNSKI was a patient at the Children's Hospital of Buffalo Lung Center on or about August 7, 2015 when a Tuberculosis Sputum Specimen was obtained and sent to the County of Erie Department of Health Lab and/or Tuberculosis Clinic located at 608 William Street Buffalo NY for culture and analysis. On or about September 25, 2015 Claimant was erroneously informed that he had tested positive for Tuberculosis and required treatment and isolation protocols. On November 17 2015 Claimant was again contacted by the TB Clinic and advised that he did not have TB and informed that the prior sputum sample had been cross-contaminated by that of another patient.
>
> Upon information and belief, the COUNTY OF ERIE by its agents, servants, and employees was negligent in failing to protect the claimant's sputum specimen from contamination; failing to properly interpret and analysize the sputum specimen; reporting a false positive finding of Tuberculosis to the claimant; reporting a false positive finding of Tuberculosis to other health care professionals; improperly requiring claimant to undergo unnecessary treatment for Tuberculosis; failing to timely deteremine the error; and failing to follow proper policies and procedures to verify and confirm a diagnosis of Tuberculosis prior to dissemination of patient information and beginning treatment protocols.

5. Claimant BRIAN M. MUSZYNSKI sustained personal and pecuniary injuries including anxiety, emotional distress, embarrassment, nausea, vomiting, fatigue, pain and other symptoms related to the unnecessary treatment claimant was forced to undergo due to the erroneous diagnosis of Tuberculosis.

6. The subject claim is for a sum to be determined by a jury.

DATED: November 25, 2015

Brian M. Muszynski

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 25th day of November, 2015, Brian M. Muszynski, being duly sworn, deposes and says that he is the claimant in this matter; that he has read the foregoing Notice of Claim and knows the contents thereof; that it is true to his personal knowledge, except as to matters stated to be upon information and belief, and as those matters he believes to be true.

Brian M. Muszynski

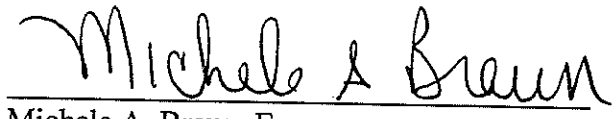
Sworn to before me on this
25th day of November, 2015.

Notary Public

MICHELE A. BRAUN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires July 21, 2018

CERTIFICATION

Pursuant to Part 130-1 of the Rules of the Chief Administrator, the undersigned attorney certifies that, to the best of my knowledge, information and belief, formed after inquiry reasonable under the circumstances, the presentation of this paper or the contentions therein are not frivolous as defined in subsection (c) of §130-1.1.



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