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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH.
SECOND ASSISTANT COUNTY ATTORNEY

MEMORANDUM

TO: Karen McCarthy, Clerk, Erie County Legislature
FROM: Michelle M. Parker, First Assistant County Attorney
DATE: June 2, 2016
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 six (6) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Frederick Rodgers v. Erie Community College
Kyriss Small v. Sheriff Howard, et al.
David Defields, Jr. v. County of Erie
Josue Ortiz v. Frank Sedita, et al.
Denise Ufland v. County of Erie
Katrina Hilbert v. County of Erie, et al.

MMP:dld
Attachments

Comm. 11D-5



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

April 28, 2016

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

Dear Ms. McCarthy:

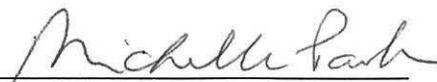
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Rodgers, Frederick v. Erie Community College - unemployment appeal</i>
Document Received:	Notice of Receipt of Appeal to Court (Appellate Division, Third Department)
Name of Claimant:	Frederick B. Rodgers 136 W. Oakwood Place Buffalo, New York 14214
Claimant's attorney:	Dennis C. Gaughan, Esq. 6161 South Park Avenue Hamburg, New York 14075

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.



GERALDINE A. REILLY
CHAIRMAN
MICHAEL T. OREASON
GEORGE FRIEDMAN
JAMES S. ALESSI
RANDALL T. DOUGLAS
MEMBERS

STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
Albany NY 12212-5126
(518) 402-0205
FAX: (518) 402-5208

SUSAN BORENSTEIN
EXECUTIVE DIRECTOR
JAYSON S. MYERS
CHIEF ADMINISTRATIVE LAW JUDGE
TERESA A. DENISO
CHRISTOPHER M. TATE
MATTHEW J. TIERNEY
PRINCIPAL ADMINISTRATIVE LAW JUDGE

**NOTICE OF RECEIPT OF APPEAL TO COURT
AVISO DE RECIBO DE LA APELACIÓN A LA CORTE**

Date Of This Notice: April 19, 2016

Appeal Board Case No. 588243

IN THE MATTER OF: **FREDERICK B RODGERS**

S.S.A. or E. R. No. xxx-xx-0437

FREDERICK B RODGERS
136 W. OAKWOOD PL.
BUFFALO NY 14214

DENNIS GAUGHAN, ESQ.
6161 SOUTH PARK AVENUE
HAMBURG NY 14075

ERIE COMMUNITY COLLEGE
6205 MAIN ST.
WILLIAMSVILLE NY 14221-0000

ERIE COMMUNITY COLLEGE
CHRISTOPHER MAUGANS ESQ.
4041 SOUTHWESTERN BLVD
ORCHARD PARK NY 14127-2100

NEW YORK STATE DEPARTMENT OF LABOR
ADJUDICATION SERVICES OFFICE
APPEAL UNIT, MAIL STOP 3B
PO BOX 701
NEW YORK, NEW YORK 10014-0701

NEW YORK STATE DEPARTMENT OF LABOR
LIABILITY & DETERMINATION SECTION
APPEALS UNIT, RM 380
BLDG. 12, STATE OFFICE BLDG CAMPUS
ALBANY, NY 12240

This is to acknowledge receipt of a NOTICE OF APPEAL to the Appellate Division of the Supreme Court, Third Department, from a decision of the Unemployment Insurance Appeal Board. The decision of the Board (Appeal Board Case No. 588243) was mailed on March 23, 2016. The Claimant has filed the NOTICE OF APPEAL which is March 31, 2016. All parties should consult the back of this notice for information about the rules and instructions with respect to this appeal.

UNEMPLOYMENT INSURANCE APPEAL BOARD

Susan Borenstein
EXECUTIVE DIRECTOR

2016 APR 21 AM 11:50
RECEIVED
HUMAN RESOURCES

**READ IMPORTANT INSTRUCTION AND INFORMATION ON REVERSE SIDE
LEA INSTRUCCIONES e INFORMACIONES IMPORTANTES
TRADUCIDAS EN ESPAÑOL AL REVERSO DE ESTA HOJA**

Comm. 11-5
Page 3 of 53

This is to acknowledge a letter appealing the decision of the Unemployment Insurance Appeal Board to the Appellate Division, Third Department, in Albany, New York.

The Appellate Division has established special rules and instructions with respect to unemployment insurance appeals. Claimants may represent themselves if they do not wish to hire an attorney. Corporations must be represented by an attorney. The Attorney General's Office will provide you with a copy of the Court's instructions which explain procedures you must follow if you want the Court to review your case. In order to obtain these instructions, you must write to the Attorney General's Employment Security Section, 26th Floor, 120 Broadway, New York, NY 10271.

PLEASE NOTE: Pursuant to the rules of the Court, if the appellant (that is the party making the appeal) does not serve and file Court papers within nine months after the date of the Appeal, the Court will consider the appeal abandoned. Exceptions to this time limit can be made only by the Court.

Esta es para indicarle que hemos recibido una carta apelando la decisión de la Junta de Apelaciones del Seguro por Desempleo la Junta de la División de Apelaciones De La Corte Suprema, Tercer Departamento, en Albany, Nueva York.

La División de Apelaciones ha establecido reglas especiales e instrucciones con respecto a las apelaciones del Seguro por Desempleo. Los reclamantes pueden representarse a sí mismos si no quieren conseguir un abogado. Sociedades Anónimas tienen que ser representadas por abogados. La oficina del Fiscal General le proveera a usted con una copia de las instrucciones de la Corte en la cual se le explicara el procedimiento que usted debe seguir si quiere que la Corte revise su caso. Para obtener las instrucciones, usted debe escribir a Attorney General's Employment Security Section, 26th Floor, 120 Broadway, New York, NY 10271.

TOME NOTA: De acuerdo con las reglas de la Junta si el reclamante (es decir la parte haciendo la apelacion) no somete y envia su petición a la Corte durante el periodo de nueve meses a partir de la fecha de la Petición de Apelacion, la Corte considerara que usted ha abandonado la apelacion. Excepciones en cuanto al limite del tiempo seran hechas solamente por la Corte.



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 3, 2016

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

Dear Ms. McCarthy:

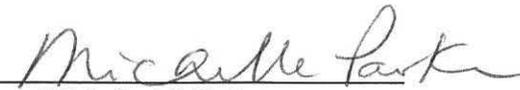
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Small, Kyris v. Sheriff Howard and NYS Parole Chair Andrea Evans</i>
Document Received:	Order to Show Cause
Name of Claimant:	Kyris Small #56131 Erie County Holding Center 40 Delaware Avenue Buffalo, NY 14202-3999
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

State of New York
County of Erie

In the matter of the application of

Order to show cause

Kyriss J. Small # 56131
Petitioner

Index # _____

^{-v-}
ANDREA EVANS, NYS. PAROLE CHAIR
TIMOTHY HOWARD, ERIE COUNTY SHERIFF
Respondent

for a judgment pursuant to Article 78 of
the NYS Civil Practice Laws and Rules

Upon the annexed affidavit in support of an Order to show cause of Kyriss J. Small
56131, verified on the _____ day of _____, 20____,
and upon the annexed Petition of Kyriss J. Small # 56131,
sworn to on the _____ day of _____, 20____, it is hereby ordered that
Respondent ANDREA EVANS & TIMOTHY HOWARD show cause at a term of this Court to
be held in the County of Erie, on the _____ day of _____, 20____, or as soon
thereafter as counsel can be heard, why a judgment should not be made and entered in this matter
judgment pursuant to Article 78 of the NYS Civil Practice Laws and Rules:

Vacating and setting aside Respondent's determination of: Detaining petitioner
any further due to fatal defect of warrant # 686294
inasmuch as 15 day toll for preliminary hearing / finding expired
no preliminary hearing has been offered, and further action has
been scheduled AND/OR

Directing Respondent to: Release and Restore petitioner to
post release supervision.

and granting such other and further relief as this Court may deem just and proper.

IT IS FURTHER ORDERED that service of a copy of this Order, together with the papers upon which it is granted, upon both the Respondent TIMOTHY HOWARD & ANDREA EVANS and the Attorney General, by United States mail, on or before the ____ day of _____, 20____, shall be deemed sufficient.

Date: _____

Signature, Justice of the Supreme Court



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 10, 2016

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

Dear Ms. McCarthy:

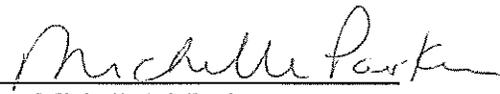
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Defields, David Jr. v. County of Erie</i>
Document Received:	NYS Division of Human Rights Charge of Discrimination
Name of Claimant:	David Defields, Jr. 354 N. Pleasant Parkway Buffalo, New York 14206
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enc.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

DAVID DEFIELDS, JR.,

Complainant,

v.

ERIE COUNTY, DEPARTMENT OF PUBLIC
WORKS,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.
10181332

Federal Charge No. 16GB602581

I, David Defields, Jr., residing at 354 N. Pleasant Pkwy, Buffalo, NY, 14206, charge the above named respondent, whose address is Attn: County Attorney, Michael Siragusa 95 Franklin St., Room 1634, 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 disability.

Date most recent or continuing discrimination took place is 4/29/2016.

The allegations are:

1. I have a disability within the meaning of the New York State Human Rights Law, a fractured knee. Because of this, I have been subject to unlawful discriminatory actions. I was hired by the respondent in August 1999.
2. On 04/25/2016, respondent representative Robin Domochowski offered me a promotional position as an Auto Mechanic in Hamburg, position #624, which I had applied for on or about 03/11/2016. I accepted and was told I would start on 04/30/2016.
3. On 04/13/2016, I sustained an on the job injury to my knee and my doctor took me out of work until at least 04/27/2016, the date of my next doctor visit. On that date, the doctor advised me I had a fractured knee and took me out of work until at least 06/08/2016.
4. I called Rich Denning to advise him of my status and told him I would drop off a doctor's note as per respondent policy.
5. On 04/029/2016, Robin Domochowski called me and stated that my promotion had been taken away from me because I was on Worker's Compensation. However, I was not on Worker's Compensation at that time and was still using my sick leave accruals.

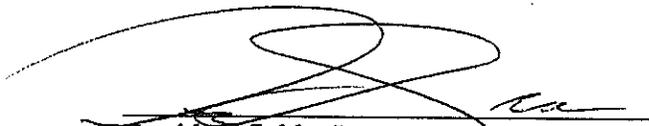
6. I asked Ms. Domochowski who had made this determination and she stated it was Department of Public Works Commissioner John Laffredo. I called Mr. Laffredo and he stated he had no idea what I was talking about and that whatever Robin had told me sticks. He also stated I should let the union fight for my job since I pay union dues.

7. I believe respondent denied me a promotional position due to my disability.

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

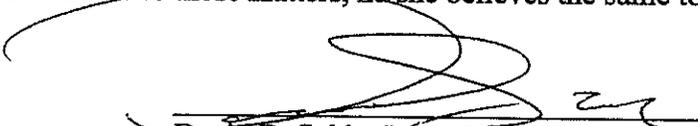
I also charge the above-named respondent with violating the Americans with Disabilities Act (ADA) (covers disability relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations 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.


David Defields, Jr.

STATE OF NEW YORK)
COUNTY OF) SS:

David Defields, Jr., 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.


David Defields, Jr.

Subscribed and sworn to
before me this 5 day
of May, 2016


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



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 10, 2016

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

Dear Ms. McCarthy:

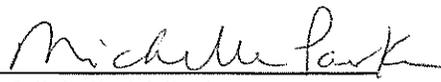
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Ortiz, Josue v. Kenneth Case, Frank A. Sedita, III, Frank Clark, and the Erie County District Attorney's Office</i>
Document Received:	Summons and Complaint
Name of Claimant:	Josue Ortiz
Claimant's attorney:	Wayne C. Felle, Esq. The Law Offices of Wayne C. Felle, P.C. 6024 Main Street Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

Comm. 11D-5
Page 11 of 53

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSUE ORTIZ,

Plaintiff,

CASE NO. 1:16-cv-00322

COMPLAINT FOR VIOLATIONS OF
FOURTH AND FOURTEENTH
AMENDMENTS TO THE UNITED
STATES CONSTITUTION; FALSE
IMPRISONMENT; NEGLIGENCE;
INTENTIONAL AND NEGLIGENT
INFLECTION OF EMOTIONAL
DISTRESS

v.

KENNETH F. CASE, ESQ., in his Capacity
as an Assistant District Attorney of the ERIE
COUNTY DISTRICT ATTORNEY'S OFFICE,
and FRANK A. SEDITA, III, ESQ., Individually and
in his Capacity as District Attorney of the ERIE
COUNTY DISTRICT ATTORNEY'S OFFICE,
and FRANK J. CLARK, ESQ., Individually and
in his Capacity as District Attorney of the ERIE
COUNTY DISTRICT ATTORNEY'S OFFICE
and THE ERIE COUNTY DISTRICT
ATTORNEY'S OFFICE,

Defendants.

DISTRICT ATTORNEY
25 DELAWARE AVE
2016 APR 27 AM 10:45

INTRODUCTION

1. This civil rights actions seeks compensatory and punitive damages as a result of the wrongful conviction and imprisonment of Plaintiff, Josue Ortiz, a 23 year old United States citizen, from November 17, 2004 to December 12, 2014. By and through his attorneys, The Law Offices of Wayne C.

Felle, PC (Wayne C. Felle, Esq., of counsel), alleges and states his Complaint as against the defendants, as established more particularly herein.

2. The wrongful arrest, conviction and imprisonment of Mr. Ortiz was the direct and foreseeable consequence of official policies, patterns, practices and customs that manifest a failure to recognize basic principles of due process, constitutional rights and demonstrate intentional, reckless disregard and indifference for human life and liberty. The Erie County District Attorney's Office through Defendants named herein and as an agency operating with the authority of law failed to protect Mr. Ortiz by allowing individuals who lacked the proper training and oversight to violate his constitutional rights, thereby causing Mr. Ortiz profound physical and psychological injuries.

JURISDICTION AND VENUE

3. This civil rights action is brought pursuant to, inter alia, the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 and other state and federal laws for relief from commission of intentional and tortuous acts. This Court has jurisdiction over federal claims pursuant to the constitutional provisions enumerated and 28 U.S.C. §1331 and §1343 (3) and (4), as they are brought to redress deprivations of rights privileges and immunities secured by the United States Constitution and by law. This Court has jurisdiction over the supplemental state claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in the Western District of New York, under 28 U.S.C. §1391(b), in that Defendants are located in this state and district, and a substantial part of the acts and/or omissions giving rise to Plaintiff's claim occurred in this district.

5. That at all times hereinafter mentioned, and at the time of the occurrence hereinafter more particularly set forth, the plaintiff, JOSUE ORTIZ, was a citizen of the United States residing in the City of Buffalo, County of Erie, State of New York.

6. That at all times hereinafter mentioned, and at the time of the occurrence hereinafter more particularly set forth, the defendants, KENNETH F. CASE, ESQ. (hereinafter "CASE"), FRANK J. CLARK, ESQ. (hereinafter "CLARK") and FRANK A. SEDITA, III, ESQ. (hereinafter "SEDITA"), were residents of the County of Erie, State of New York.

7. That at all times hereinafter mentioned, the defendant, THE ERIE COUNTY DISTRICT ATTORNEY'S OFFICE (Hereinafter "ECDAO") is a county department duly organized and existing under and by virtue of the laws of the County of Erie and State of New York.

8. That at all times hereinafter mentioned Defendants CLARK and SEDITA as the acting District Attorney's, respectively, were responsible for the policies, practices and customs of District Attorney's office during their tenure.

9. That at all times hereinafter mentioned Defendants CLARK and SEDITA, respectively, were responsible during their tenure for the hiring, training, supervision, retention, control and discipline of Assistant District Attorney's within the office of the District Attorney, and its investigators, officers and employees.

10. That at all times hereinafter mentioned Defendants CLARK and SEDITA, respectively, were during their tenure the employer, supervisor and/or authority of the individual defendant, CASE, and through the authority vested in the Erie County District Attorney's office CASE was authorized to act under the color of law.

11. That at all times hereinafter mentioned CLARK and SEDITA, respectively were during their tenure responsible for ensuring that the Assistant District Attorneys of the office of the District

Attorney, acted lawfully, followed constitutional safeguards, implemented and adhered to customs, practices and policies of the District Attorney's office, the ordinances and laws of the County of Erie, and State of New York and the rights and liberties provided for by the Constitution of the State of New York and the United States.

12. Defendant CASE was an individual attorney of the District Attorney's office at all times herein and was acting in such capacity as an authorize officer and attorney of the ECDAO, under color of law.

13. The defendants, CLARK, SEDITA and CASE were at all times relevant to this complaint duly elected and/or appointed to lawfully administer justice through the ECDAO, having taken an oath to uphold the laws of the State of New York and the United States, thereby acting under color of law.

14. At all times relevant hereto and in all of their actions described herein, each defendant was acting under the color of law, county authority, state authority, statute, custom, practice or usage, and pursuant to their official capacity.

15. At all times relevant hereto and in all of their actions described herein, each defendant was acting intentionally and/or with reckless disregard and/or deliberate indifference.

16. This claim is brought on behalf of JOSUE ORTIZ for violation of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable search and seizure to his person; deprivation of due process; for the loss in his liberty; for the physical, emotional and mental suffering all arising from his unjust and wrongful conviction and imprisonment for crimes he did not commit.

BACKGROUND AND FACTUAL ALLEGATIONS

17. On November 16, 2004, JOSUE was arrested and subjected to custodial interrogation, arrest, prosecution and incarceration through the actions, authority and power of the Defendant's through color of law until his release on December 8, 2014.

18. JOSUE did not cause or contribute to his own wrongful arrest, conviction, or incarceration. Rather, this gross miscarriage of justice was the direct result of the intentional, reckless and deliberately indifference of Defendants who concealed and withheld exculpatory evidence related to the commission of this crime, and instead relied on a coerced, manipulate and false confession from a man whom they knew was suffering from obvious psychiatric illness and who had a history of serious mental health problems at the time of his interrogation and alleged confession. JOSUE's significant cognitive impairment, bi-polar disorder and schizophrenia contributed to a diminished and distorted capacity to comprehend everyday events which allowed defendants to deny and violate his constitutional rights.

19. Rather than properly rejecting the case as presented by Buffalo Police Officers, the defendants choose to investigate, direct evidentiary inquiries, remove pieces of evidence that did not fit into the prosecution's theory, and to prosecute a case known to have serious questions of credibility and trustworthiness, all contrary to the pursuit of justice. Defendants knowingly relied on false and inconsistent identification evidence and intentionally failed or refused to turn over to criminal defense counsel for JOSUE exculpatory and constitutionally mandated material from the investigation that makes clear the innocence of the JOSUE. Disregarding JOSUE's psychiatric disorders and obvious psychotic break from reality at the time of the investigation and interrogation, along with ignoring the

substantial evidence of his innocence the Defendants obtained and relied upon a manufactured, coerced and patently false confession from JOSUE

20. At the time of JOSUE's indictment and prosecution there were significant inconsistencies between the purported "confession" and the objective physical evidence and initial witness descriptions of the perpetrators of the crime that should have caused these Defendants to reject, prevent and question the integrity of the criminal case against JOSUE, but instead these Defendants removed, hid or altered the inconsistent investigation material which was clearly "Brady" material and failed, refused and denied turning over the exculpatory information or evidence to criminal defense attorneys representing JOSUE.

21. On December 6, 2004, an Erie County Grand Jury indicted JOSUE on two (2) counts of Murder in the First Degree in violation of New York Penal Law §125.27(1)(a)(viii); two (2) counts of Murder in the First Degree in violation of New York Penal Law §124.27(1)(a)(vii); two (2) counts of Murder in the Second Degree in violation of New York Penal Law §125.25(1), 20.00; two (2) counts of Murder in the Second Degree in violation of New York Penal Law §125.25(3); and one (1) count of Burglary in the First Degree, an Armed Felony in violation of New York State Penal Law §140.30(1), 20.00. These charges involved crimes committed against two different male victims in the City of Buffalo, New York on November 11, 2004.

22. As a result of his Indictment JOSUE was facing a sentence of life in prison if convicted. Given his emotional and mental condition he could not cope with the idea of being behind bars the rest of his life. On May 22, 2006, the Honorable Michael L. D'Amico, J.S.C., accepted Claimant's conviction of two counts of manslaughter in the 1st degree.

23. Thereafter, on June 16, 2006, JOSUE was sentenced to an indefinite term of twenty-five (25) years of imprisonment with five (5) years of post release supervision, and was directed to the custody of the New York State Department of Corrections.

24. Thereafter and following an investigation, by the United States Attorney's Office, Federal Bureau of Investigations and the New York State Police into the 10th Street and 7th Street gangs, along with examination of witness statements, physical evidence, likelihood of false confession and DNA evidence surrounding JOSUE's conviction for the killings of the Camacho brothers, law enforcement officials determined that three different individuals (exclusive of JOSUE) were responsible for the underlying crime.

25. On November 16, 2012, U.S. Attorney for the Western District of New York, William J. Hochul, Jr., as well as Assistant U.S. Attorney, Joseph M. Tripi announced that a three count superseding indictment was returned by a Federal Grand Jury on November 8 2012 charging Efrain Hidalgo, Brandon Jonas and Misael Montalvo, with two counts of discharging a firearm causing death in furtherance of drug trafficking and violent crime for the murders of Nelson and Miguel Camacho, the same individuals JOSUE was convicted of killing. On November 9, 2012 the Federal District Court signed an Order authorizing release of the Federal Grand jury minutes to the Erie County District Attorney's Office.

26. Assistant U.S. Attorney, Joseph M. Tripi announced that based upon the independent investigation of Federal law enforcement officers JOSUE has "zero role in this offense" and requested that the Erie County District Attorney's Office would release JOSUE without further litigation or proceedings. Notwithstanding the foregoing, JOSUE remained in the custody of the New York State Department of Corrections due to defendant's intentional, reckless disregard and/or indifference to the rights of the Plaintiff herein. .

27. Shortly after the indictment against the above-mentioned individuals was returned, the U.S. Attorney's Office announced JOSUE's innocence publicly and in Federal Court. Assistant U.S. Attorney, Joseph Tripi stated that the evidence provided to the District Attorney's Office, specifically defendant SEDITA, clearly establishes JOSUE's innocence.

28. The evidence provided to SEDITA, then District Attorney, was clear and unequivocal that JOSUE was innocent of the crimes he was convicted of, yet JOSUE still remained in custody due to the intentional, reckless disregard and/or indifference to his liberty and constitutional rights by Defendant, SEDITA.

29. Notwithstanding the receipt of information from the United States Attorney General's Office which exonerated JOSUE the Defendants SEDITA and the ECDAO would not agree to his release from custody. JOSUE was required to file a Motion to Vacate the Claimant's Conviction, filed on April 23, 2013. The People responded on July 12, 2013 and served a supplemental reply with attachments on July 16, 2013. JOSUE then submitted a supplemental affidavit based on DNA lab reports dated 5/25/12, 12/24/12 and 6/17/13 along with a reply to the People's opposition on July 17, 2013. The People submitted a supplemental opposing affidavit (based on DNA reports) on July 25, 2013. Oral argument was heard on July 29, 2013. JOSUE then provided an affidavit of Emily Trott, Esq. (JOSUE's counsel in the Federal Grand Jury) dated September 3, 2013 and another supplement to the original motion on October 17, 2013. The People submitted a response to the Trott affidavit on December 4, 2013.

30. JOSUE's motion to vacate was based on newly discovered evidence, conflicts in identification and physical evidence, likelihood of false confession, DNA evidence which excludes JOSUE from the crime and proves his actual innocence. The motion was based on the contention that the Claimant's guilty plea was based upon a false, manipulated and coerced confession procured by the

Buffalo Police when JOSUE was suffering from a severe psychotic break from reality, including schizophrenia, exacerbated by sleep deprivation, drug use and a limited command of the English language.

31. Furthermore, evidence was discovered, that was not turned over to the Claimant, or his attorney's, at the time of the Claimant's alleged confession, indictment, conviction and/or sentencing.

32. Notwithstanding the clear and convincing evidence of JOSUE's wrongful conviction and incarceration, the Erie County District Attorney's Office, SEDITA acting District Attorney, continued to oppose the motion to vacate his conviction, ignoring the proof provided by other law enforcement officials and agencies, the evidence of inconsistent and doubtful proof supporting JOSUE's conviction and ignoring the overwhelming evidence that unequivocally established guilt of Efrain Hidalgo, Brandon Jonas and Misael Montalvo in the murders of the Camacho brothers.

33. JOSUE continued to be incarcerated from November 16, 2012 to December 8, 2014 due to Defendants SEDITA and the ECDAO actions and/or inactions including an unwillingness to accept federal law enforcement investigation results and the federal indictment of the individuals responsible for the crimes at issue, along with overwhelming inconsistencies in the evidence and clear violations of the constitutional rights in the criminal prosecution of JOSUE.

34. Based upon the continued opposition to Plaintiff's Motion to Vacate and Supplemental Motion to Vacate, by SEDITA, the Erie County District Attorney's Office, on February 7, 2014, the Honorable Thomas J. Franczyk Ordered a hearing to determine whether by clear and convincing evidence the Claimant should have his conviction for the murders of the Camacho brothers vacated.

35. JOSUE continued to be incarcerated during this time, rather than released on his own recognizance pending the hearing based on defendants continue intentional actions to obstruct justice.

36. At numerous hearing dates for the Motion to Vacate JOSUE's conviction, defendants SEDITA and ECDAO failed to present witnesses, and was in other ways not prepared to go forward with the hearing ordered by the Honorable Thomas J. Franczyk. While presenting no evidence to rebut JOSUE's innocence, the District Attorney's Office continued their opposition and delays, while JOSUE continued to be wrongfully imprisoned.

37. The Erie County District Attorney's Office continued their opposition to JOSUE's Motion to Vacate until December 8, 2014, when for the first time the Erie County District Attorney conceded the innocence of the Plaintiff, allowing for the conviction entered on June 16, 2006 to be vacated, thereafter the Claimant was released from prison on his own recognizance pending dismissal of the underlying indictment.

38. Thereafter, the Claimant brought a Motion to Dismiss the underlying Indictment for murder. On January 20, 2015, the 2004 indictment in *The People v. Josue Ortiz*, indictment number 02630-2004 in the New York State Court was dismissed. The Order was officially filed and entered on May 8, 2015.

39. The dismissal of the indictment was based on the actual innocence of JOSUE, as well as the history, character and condition of the defendant and spurious and improper criminal proceedings leading to his false conviction and wrongful incarceration.

40. The claims made herein are for violation of the constitutional rights, protections and safeguards afforded to all United States citizens, and specifically the Plaintiff herein. The Defendants herein violated Plaintiff's Fourth and Fourteenth Amendments to the United States Constitution, through applicability of 42 U.S.C. § 1983 and all Judicial rulings and/or decisions applicable thereto.

41. Plaintiff claims that individual Defendant's and the District Attorney's Office violated his constitutional rights under color of law. Despite knowledge of illegal policies, patterns, practices and

customs, the supervisory and policy making officers have not been effectively disciplined, trained or otherwise properly supervise the individuals who engaged in and furthered these policies, patterns, practices and customs; have not effectively trained the defendants with regard to the proper constitutional and statutory limits of the exercise of their authority; and have endorsed the policies, patterns, practices and customs thereby affirming and endorsing the actions.

42. Prior to and during the criminal investigation, prosecution and imprisonment of Plaintiff the Defendant's maintained policies or customs exhibiting deliberate indifference to the constitutional rights of citizens which caused violation of their constitutional rights, specifically the plaintiff herein. The supervisory and policy making officers at all times herein relevant, and prior, took no effective action to ensure that detainees, persons of interest and/or subjects with mental, emotional and/or cognitive illnesses and/or impairments were treated with recognition of the likelihood that these conditions could lead to a false, coerced and/or manipulated confession; in instances as demonstrated herein these officers in fact took advantage of such illness and/or impairment in order to ostensibly solve a crime, "clear the case" or to give the appearance of successful criminal investigation; these same officers failed to have any resources available to law enforcement personal to educate, train and assist during involvement with persons of mental and psychiatric illness and/or impairment to ensure the truthfulness, reliability and veracity of statements, factual assertions, incriminating comments or confessions all creating a culture wherein persons with mental and/or psychiatric illness or impairment were subjected to unreasonable, manipulative, coercive and unlawful interrogation, detention, arrest, prosecution and conviction in violation of constitutional protections.

43. Prior to and during the criminal investigation, prosecution and conviction of Plaintiff it was the policy or custom of the ECDAO to endorse, authorize and enforce unconstitutional methods, investigations, arrests, identifications, evidence disclosure and all other procedures related to the

Constitutional rights of citizens, including the Plaintiff herein. Defendants herein were aware of inconsistent, exculpatory and contrary identification testimony related to the perpetrators of this crime, notwithstanding the defendants herein, including supervisory and policy-making officers, endorsed and followed illegal policies, patterns, practices and customs wherein such information was not provided to the Defendant, or his counsel, in compliance with constitutional requirements and legal precedent; where the effect of the inconsistent evidence was to weaken the prosecution case it was buried, not disclosed or removed from the file in violation of constitutional protections and requirements; and where the defendants acted in a manner, inconsistent with their oath and the administration of justice, to procure at all costs an ostensible conviction even where there were significant facts contradicting the proof of guilt.

44. Prior to and during the criminal investigation, prosecution and conviction of Plaintiff it was the policy or custom of the ECDAO to inadequately and improperly investigate citizen complaints of the ECDAO, including attorney's, investigators, and agents of the ECDAO, and instead acts of misconduct and constitutional violations were tolerated and condoned.

45. Prior to and during the criminal investigation, prosecution and conviction of Plaintiff it was the policy or custom of the ECDAO to inadequately train, educate and/or supervise its employee's, including CASE, and thereby allowed a policy or custom of learning on the job through antiquated, undocumented and unconstitutional methods exhibiting a reckless indifference and/or intentional disregard to the liberties and constitutional rights of United States citizens, specifically the Plaintiff herein.

46. Prior to and during the criminal investigation, prosecution and conviction of Plaintiff it was the policy or custom of the ECDAO to condone and support the obstruction, deliberate removal or

failure of disclosure of exculpatory information related to the investigation, arrest and prosecution of United States citizens, including the Plaintiff herein.

47. During the criminal prosecution and conviction of Plaintiff the ECDAO, specifically through CLARK and CASE, failed to provide exculpatory and/or “Brady material” to counsel for Plaintiff (then a criminal defendant), after the same was demanded, in contradiction of required constitutional rights of an accused.

48. In failing to provide exculpatory and/or “Brady material” to counsel for Plaintiff, during the criminal prosecution, conviction and imprisonment of Plaintiff, the Defendants, CLARK and CASE, intentionally violated the constitutional rights of the Plaintiff herein.

49. Defendant’s ECDAO, specifically CLARK and CASE, acted in reckless disregard and/or intentional indifference to the constitutional rights of the Plaintiff (then a criminal defendant) in prioritizing a conviction over protection of the constitutional rights of the Plaintiff herein. The false arrest, conviction and incarceration of the Plaintiff is a direct product of the actions and/ or inactions of the Defendant’s, ECDAO, CLARK and CASE.

50. The ECDAO also violated the constitutional rights of the Plaintiff herein through a policy, custom and/or directive that a convicted person was not provided constitutional rights even after his conviction and incarceration was reasonably known and proven to be wrongful and unjust. Defendant’s maintained policies or customs exhibiting intentional, deliberate indifference and/or reckless disregard to the constitutional rights of the plaintiff herein. The supervisory and policy making officers at all times herein relevant, and prior, took no effective action to release from prison a man known to be innocent and rather chose to stubbornly reject information and evidence offered by the United States Attorney General’s office and the Federal Bureau of Investigation while the plaintiff suffered in prison.

51. The ECDAO, specifically SEDITA, failed and refused to accept the proof, evidence and prosecutorial decisions of the United States Attorney General's Office and/or the Federal Bureau of Investigation which demonstrated that the crimes Plaintiff was wrongfully convicted and incarcerated for were in fact committed by individuals other than Plaintiff herein.

52. Defendant's ECDAO and SEDITA intentionally violated the constitutional rights of the Plaintiff herein through a custom or policy that stubbornly, exclusively and wrongfully rejected any implication of wrongful conviction and/or incarceration of the Plaintiff herein. Due to the reckless disregard, intentional indifference and/or the outright intentional actions of the defendants an innocent man was caused to be incarcerated when there was overwhelming proof of his innocence in violation of the Fourth and Fourteenth Amendments of the United States constitution and New York State constitutional provisions.

53. Defendant's herein were negligent in performing their duties and failed, neglected and/or refused to properly and fully discharge their responsibilities by, among other things failing to investigate all leads, investigate all potential perpetrators of the crime, properly follow-up and question identification and fact witnesses, process and incorporate physical and/or forensic evidence, failing to consider the mental and psychiatric conditions of JOSUE, coercing and manipulating JOSUE to sign a confession, failing to adequately train and supervise and in other ways rushing to judgment without regard to the possibility of false accusation, arrest, detainment, conviction or imprisonment of an innocent man.

54. The willful and intentional actions of the defendants herein constitute outrageous conduct insofar as they were intended to cause JOSUE to be imprisoned for over ten (10) years, without regard to his mental and psychiatric condition, with a likelihood of causing JOSUE extreme and unnecessary emotional distress.

CLAIMS FOR RELIEF

55. As a result of his unjust conviction, JOSUE has been wrongfully imprisoned for 10 years and twenty-two (22) days his life. Further, he has lived with the stigma and humiliation of being looked upon by others as a murderer from the time of his conviction, to the time of his exoneration, and beyond.

56. The injuries and damages sustained by JOSUE arising from his unjust conviction and imprisonment include, but are not limited to the following: personal injuries; pain and suffering; severe mental anguish; emotional distress; activation, precipitation and aggravation of posttraumatic stress disorder; loss of income; humiliation, indignities and embarrassment; degradation, including the day to day indignities, embarrassment and degradation of prison life, and life as a convicted murderer; injury to reputation; permanent loss of natural psychological development; subjection to physical and verbal attacks; abuse and harassment; restrictions on all forms of personal freedom, including, but not limited to, daily loss of freedom in movement from place to place, the loss of choice and opportunity with respect to diet, sleep, personal and social contact, as well as the loss of educational opportunity, vocational opportunity, adequate medical and/or psychiatric and/or psychological care by physicians and/or other medical personnel of his own choosing, athletic opportunity, personal fulfillment, sexual activity, family relationships, socializing, reading, television, movies, travel, enjoyment and expression. As a direct result of his unjust conviction and imprisonment and loss of freedom, JOSUE will require ongoing medical and/or psychiatric and related treatment, therapy, rehabilitation and care into the indefinite future. He has been caused to suffer from and continues to suffer from posttraumatic stress disorder, nightmares and insomnia, anxiety, panic attacks, depressive disorder, sleep disturbance, nightmares and dysthymia.

57. As a result of his incarceration, JOSUE was effectively sealed off from his family and friends. The only contact he had over ten (10) years was through limited supervised telephone calls and letters which took place under the stricture of prison life. On those occasions when he had visitors, as well as numerous other occasions, he was subjected to the indignity and embarrassment of being strip searched.

58. In addition to being sealed off from his friends and family, while in prison, JOSUE, was, in effect, also sealed off from establishing new and meaningful relationships with others. As a result of the effects of his unjust conviction and incarceration, it is not likely he will ever have the ability to do so in the future.

59. Not only was JOSUE caused to suffer the daily rigors, degradation, humiliation, abuse and loss of freedom, while in prison, he was also deprived of being able to do the simple things that most people take for granted such as driving, shopping, visiting friends and relatives, developing romantic relationships, turning on a television to watch a favorite show, taking a walk or even stopping at a restaurant for a cup of coffee.

60. Since JOSUE's release he has been making many attempts to find employment, but as soon as he disclosed his past to prospective employers the position would become unavailable. JOSUE's attempts at employment have resulted in rejection after rejection. He has been forced to rely on social services for his basic support and necessities. His ability to obtain meaningful employment in the future is basically nonexistent and it is unlikely that JOSUE will ever be employed.

61. JOSUE can never regain the more than ten years of his life during which he was wrongfully incarcerated by the State of New York. At a minimum, he deserves some measure of compensation for the time he was robbed of and the damages he has suffered and continues to suffer as a result.

62. After his conviction, JOSUE was confined to numerous correctional facilities throughout New York State. During this period he suffered profoundly as a victim of the unjust and erroneous application of the Criminal Justice System of New York State. JOSUE had numerous family members pass away, and was unable to attend their funerals, or even be aware of when they passed away. In particular, JOSUE's grandmother passed away in 2009, and JOSUE was not told of her passing until 2012. JOSUE lives with the shame of his grandmother passing, while thinking he was a murderer.

63. JOSUE was physically attacked by other in-mates, one such occurrence resulted in JOSUE being stabbed in the face. Furthermore, because of his severe mental state, he was subject to horrific emotional abuse by the correctional officers, including throwing cold water on him and taking away his mattress and bedding for periods of time. Moreover, JOSUE was not only subject to physical abuse by other inmates but by correctional officers within the New York State Department of Corrections. Further, because of the abuse and mental state JOSUE was in, he attempted to take his own life in 2005 by attempting to hang himself with a sheet. Throughout his incarceration, JOSUE lived in constant fear of being sexually assaulted, beaten, stabbed, burned or killed. He feared for his physical safety, indeed for his life.

64. JOSUE can never regain the more than ten years of his life during which he was wrongfully incarcerated by the State of New York. At a minimum, he deserves some measure of compensation for the time he was robbed of and the damages he has suffered and continues to suffer as a result.

65. As a result of his unjust conviction and imprisonment, it was the perception of the community, the Department of Correction employees and other persons that JOSUE was a guilty of murdering two people assassination style. As a result he was treated as a violent criminal by prison personnel. His condition was further aggravated in that his sense of reality was totally turned inside out.

66. Due to JOSUE's unjust conviction and incarceration, his sense of reality, his self-confidence, his day to day living skills, his social skills, his trust in others, his trust in his own perceptions were severely affected, eroded and/or destroyed. He now feels helpless to control his life and has little hope for the future. It is unlikely that he will ever be able to live and manage his life independently.

67. In addition to the pain and suffering sustained by JOSUE, he will require future comprehensive psychiatric evaluations and treatment, medications, therapy and rehabilitation, including psychological counseling, case management services and supervised community residential services.

68. Had JOSUE not suffered from his wrongful conviction and incarceration, he would have had available to him the opportunity to be gainfully employed. As stated above, he is now virtually unemployable. As a result of his incarceration he has lost the past and future opportunity for employment and the economic value thereof.

69. The within Claim qualifies for "docket priority" as provided for in §8-b.2 of the New York State Court of Claims Act.

WHEREFORE, Plaintiff, JOSUE ORTIZ, prays for judgment against all Defendants, and each of them, as follows:

1. For general damages against the County of Erie and Erie County District Attorney's office, inclusive of individual Defendants, jointly and severally, in an amount to be proven at trial;
2. For special damages against the County of Erie and Erie County District Attorney's office, inclusive of individual Defendants, jointly and severally, in an amount to be proven at trial;

3. For punitive and exemplary damages against the County of Erie, Erie County District Attorney's office and individual County Defendants, inclusive of all defendants, jointly and severally, in an amount to be proven at trial;
4. For reasonable costs, expenses, and attorney fees pursuant to 42 U.S.C. §1988 and any other applicable law;
5. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on any and all issues triable by a jury.

DATED: April 22, 2016
Williamsville, NY

**LAW OFFICES OF
WAYNE C. FELLE, P.C.**



WAYNE C. FELLE, ESQ.
Attorney for Plaintiff
6024 Main Street
Williamsville, NY 14221
Tel. No. (716) 505-2700



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 13, 2016

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

Dear Ms. McCarthy:

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

File Name:	<i>Ufland, Denise v. County of Erie</i>
Document Received:	NYS Division of Human Rights Charge of Discrimination
Name of Claimant:	Denise Ufland 4514 Zenner Road Eden, New York 14057
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enc.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

DENISE UFLAND,

Complainant,

v.

ERIE COUNTY, DEPARTMENT OF SOCIAL
SERVICES,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.
10181323

I, Denise Ufland, residing at 4514 Zenner Rd., Eden, NY, 14057, 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 disability.

Date most recent or continuing discrimination took place is 5/12/2015.

See Attached

New York State Division of Human Rights
Complaint Form

RECEIVED

MAY 04 2018 TEW

NYSDHR BUFFALO
REGIONAL OFFICE

CONTACT INFORMATION

My contact information:

Name: Denise Uffland
Address: 4514 Zenner Rd Apt or Floor #: _____
City: Eden State: NY Zip: 14057

REGULATED AREAS

I believe I was discriminated against in the area of:

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Employment | <input type="checkbox"/> Education | <input type="checkbox"/> Volunteer firefighting |
| <input type="checkbox"/> Apprenticeship Training | <input type="checkbox"/> Boycotting/Blacklisting | <input type="checkbox"/> Credit |
| <input type="checkbox"/> Public Accommodations
<small>(Restaurants, stores, hotels, movie theaters amusement parks, etc.)</small> | <input type="checkbox"/> Housing | <input type="checkbox"/> Labor Union, Employment Agencies |
| <input type="checkbox"/> Commercial Space | <input type="checkbox"/> Internship | |

I am filing a complaint against:

Company or Other Name: Erie County, Department of Social Services
Address: 478 Main Street
City: Buffalo State: NY Zip: 14202
Telephone Number: 716 858 8000
(area code)

Individual people who discriminated against me:

Name: Please see attached. Name: _____
Title: _____ Title: _____

DATE OF DISCRIMINATION

The most recent act of discrimination happened on: 5 12 15
month day year

1323

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 Domestic Violence Victim Status is a basis only in Employment complaints). These exceptions are listed next to the types of discrimination below.

I believe I was discriminated against because of my:

<input type="checkbox"/> Age <i>(Does not apply to Public Accommodations)</i> Date of Birth:	<input type="checkbox"/> Genetic Predisposition <i>(Employment only)</i> Please specify:
<input type="checkbox"/> Arrest Record <i>(Only for Employment, Licensing, and Credit)</i> Please specify:	<input type="checkbox"/> Marital Status Please specify:
<input type="checkbox"/> Conviction Record <i>(Employment and Credit only)</i> Please specify:	<input type="checkbox"/> Military Status: Please specify:
<input type="checkbox"/> Creed / Religion Please specify:	<input type="checkbox"/> National Origin Please specify:
<input checked="" type="checkbox"/> Disability Please specify: <i>Traumatic Brain Injury</i>	<input type="checkbox"/> Race/Color or Ethnicity Please specify:
<input type="checkbox"/> Pregnancy-Related Condition: Please specify:	<input type="checkbox"/> Sex Please specify: <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Pregnancy <input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> Domestic Violence Victim Status: <i>(Employment only)</i> Please specify:	<input type="checkbox"/> Sexual Orientation Please specify:
<input type="checkbox"/> Familial Status <i>(Does not apply to Public Accommodations or Education)</i> Please specify:	<input type="checkbox"/> Retaliation <i>(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)</i> Please specify:



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: (_____)
Month day year

What is your job title? _____

No

Last day of work: (5 / 12 / 15)
Month day year

What was your job title? Senior Case Work

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: _____

DENISE UFLAND v. ERIE COUNTY, DEPARTMENT OF SOCIAL SERVICES

I, Denise Ufland, residing at 4514 Zenner Road, Eden, New York 14057, charge Erie County, Department of Social Services, whose address is 478 Main Street, Buffalo, New York 14202, with an unlawful discriminatory practice relating to employment on the basis of disability in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law), §296(a)(1) and the Americans with Disabilities Act, as Amended.

The allegations are:

PROTECTED CLASS: Disability

1. I have a disability as defined under the New York Executive Law and the Americans with Disabilities Act, as amended.
2. Specifically, I suffer from a Traumatic Brain Injury (“TBI”) that resulted from a car accident I was in in July 2010.
3. As a result of the TBI, I suffer from a mild delay in processing information. My physician described this is a “ten to fifteen second delay” that is barely noticeable. Because of my TBI, I have a court-appointed Guardian, my father, Joseph Paul Doyka.
4. I worked for Respondent Erie County, Department of Social Services (“the County” or “Respondent”) for twenty-two years. I was hired in 1993 in Respondent’s Accounting Department. On April 1, 1996, I became a Case Worker. In/around 2000, I was promoted to the position of Senior Case Worker. I was and remain qualified for this position.
5. Following the car accident that resulted in my TBI in July 2010, I remained hospitalized until September 2010. I returned to work from medical leave in March 2011.

Disability and Accommodation Background

6. Upon my return to work, I made Respondent aware of my injuries, their effects, and my need for accommodation. Upon my return to work, I submitted medical documentation from my physician describing my injuries and their effects.
7. I resumed performing my job duties as Senior Case Worker without issue.
8. On March 29, 2011, I received a letter from Respondent’s Personnel Supervisor, Joseph P. Dobies, which stated: “It has come to my attention that you may have a medical condition that may warrant an accommodation. To determine if an accommodation is needed, please contact Susan Sizemore, Director, Office for the Disabled, which is located in Room 626 Rath Building, Buffalo, New York, telephone 858-6233.”

9. On June 15, 2011, I met with Director Sizemore in relation to a reasonable accommodation request.
10. Following our meeting, Director Sizemore sent me a letter requesting that I provide the Office for the Disabled with current medical documentation to assist her determination concerning my reasonable accommodation request. Director Sizemore's letter further requested that I have the Physical Medical Certification for Request for Reasonable Accommodation form completed by my doctor and faxed to her no later than June 25, 2011.
11. I timely submitted my completed Accommodation form.
12. On July 12, 2011, Respondent gave me a counseling memorandum accusing me of excessive tardiness. In response, I submitted a multiple page letter rebutting Respondent's accusations and calling Respondent out on its mishandling of my disability.
13. On August 31, 2011, Personnel Supervisor Dobies sent me a letter, which stated that, pursuant to Section 72, Subdivision V of the NYS Civil Service Law, Respondent was placing me on an involuntary leave of absence. Personnel Supervisor Dobies's letter went on to state that I would be required to undergo a medical examination performed by an independent physician, and that the Department would schedule the examination.
14. In its August 31, 2011 letter, Respondent reasoned that it felt this action was necessary "because of the circumstances surrounding your behavior at work." Respondent went on: "Specifically, you are unable to perform the duties of a Senior Case Worker in Children's Services. Your supervisors have noticed that you continue to struggle with basic case organization, that you have difficulty retaining and processing information and cannot manage a reduced case load. You have difficulty with changes of routine and have difficulty with adapting and processing the change. You often appear tired and fatigued."
15. I disagreed with Respondent's assessment of my abilities and did not understand how Respondent believed it could make assessments of my condition without any medical qualifications. Still, I wanted my job and believed I could still satisfactorily perform my job, so I went along with Respondent's plan to have me evaluated by an independent medical examiner.
16. On September 12, 2011, Personnel Supervisor Joseph Dobies sent me a letter confirming that Respondent had scheduled a neurological independent medical evaluation for me with Dr. Patrick Hughes for Monday, October 3, 2011 at 1:30 PM.
17. I attended my appointment with Dr. Hughes without incident. On October 31, 2011, Respondent sent a letter to me indicating that Dr. Hughes requested that a neuropsychological evaluation be conducted to complete his evaluation.
18. Then, on December 29, 2011, Personnel Supervisor Dobies sent me another letter. This time, Personnel Supervisor Dobies wrote that, "As a result of Dr. Patrick Hughes assessment of October 3, 2011 and further consultation regarding a neuropsychological evaluation we are returning you to work from your Article 72 leave effective January 2,

2012.” The letter went on: “You will resume your Senior Caseworker duties on Tuesday January 3, 2011 reporting to Christopher Anderson, Administrative Director – Services, at 9:00 a.m. for assignment.”

19. I did not actually complete an additional neuropsychological evaluation, despite what Respondent’s letter stated. In fact, nothing had changed since Respondent’s initial letter, removing me from work. I was and remained qualified for my job, despite Respondent’s mishandling of my disability.
20. I returned to work on January 2, 2012. For the next several months, I petitioned my Union for assistance in grieving Respondent’s mishandling of my forced leave of absence in relation to my disability.
21. Between May 2012 and May 2015, Respondent continued to mistreat me on the basis of my disability. For example, at various points during 2014, Respondent accused me of misconduct, an accusation that I rebutted in writing.
22. In January 2015, Respondent again accused me of misconduct and scheduled a disciplinary hearing, and again, I rebutted Respondent’s claims in writing.

Respondent’s unlawful termination of me on the basis of my disability.

23. On May 4, 2015, Respondent issued a memorandum stating that my presence was required for a Due Process Hearing and Charges of Misconduct on Tuesday, May 12, 2015. Respondent’s memorandum stated that the purpose of this meeting was to address “allegations of misconduct related to your job performance regarding an incident on 4/23/15.”
24. The memorandum went on: “During the incident involving the In Day Calendar, you were subordinate, deliberately restricting or interfering with the work performed by your department or work unit, or that performed by another person, and exhibited discourteous treatment of the public or co-workers, and used threatening language to a Supervisor or intimidating or coercing any other employees. Also you were in neglect of your job duties or responsibilities and failed follow (sic) job instructions, directions or departmental policies and procedures when you failed have (sic) contact with a child in a case assigned to you for sixty nine days. This meeting will be your opportunity to provide information in the investigation.”
25. I vehemently objected to Respondent’s characterizations of the “In Day Calendar” incident, as well as its assessment of my work performance and job duties vis-à-vis the child.
26. On May 12, 2015, I attended the Due Process Hearing with my Union Representative. In attendance were Tom Lillis, Karen Wright, Supervisor John Ryan, Children’s Services Director Connie VanDette. Respondent then informed me that I was terminated. I was shocked and believed Respondent was terminating me because of my disability. I was not given any notice before this meeting that I was being terminated and I was given no opportunity to defend myself.

27. I believe Respondent's reasons for terminating me are a pre-text for discrimination. In fact, a December 14, 2015 Decision from the State of New York Unemployment Insurance Appeal Board supports this claim.
28. By way of background, I applied for Unemployment Insurance benefits following my termination from employment with Respondent. I was initially denied benefits on the basis that I lost employment through misconduct in connection with my employment. After an unsuccessful appeal, I again petitioned the Board for re-review of my claims.
29. Following a hearing on August 7, 2015, the Board overturned its initial benefits determination. In its decision, dated December 14, 2015, granting me benefits, the Board opined: "The credible evidence establishes that the employer discharged the claimant for failing to complete the on-call calendar as anticipated. We reject the employer's contention of misconduct as unpersuasive, however, in light of the claimant's credible and consistent testimony to the contrary."
30. The December 14, 2015 Opinion went on: "We note firstly, that the calendar was completed. We note too, that after she completed the calendar, she returned it to her supervisor who forwarded it to the next individual on the list, which would not have been reasonable on his part had the claimant not already made her selection. There is no evidence that the claimant's (sic) supervisor had warned the claimant that her failure to complete the calendar would result in her discharge. We note too, that the warning was intended to address the claimant's performance, not her behavior."
31. The Board's Opinion also addressed Respondent's evidentiary failures, finding: "We find it of significance, further, that the employer's witnesses offered evasive and contradictory testimony as to how the supervisor conveyed his instruction to the claimant and her coworkers, which employees then received the calendar and when and what transpired immediately after the claimant was given the calendar. In light of such disparities within the employer's testimony, we find that the claimant did complete the calendar and return it to her supervisor, who provided it to another coworker."
32. The Opinion concluded by finding that, contrary to Respondent's assertions, I did not engage in misconduct, and that my termination was not based on misconduct. The Board wrote: "Although the supervisor may have been upset that the newly implemented process did not go smoothly, we are constrained to conclude that the claimant did not commit misconduct in the course of her employment when she selected her four days and returned the calendar to her employer. Accordingly, we conclude that the claimant was separated from her employment under non-disqualifying circumstances."
33. The Board's findings supported my belief that Respondent terminated me for reasons other than misconduct. In other words, it terminated me because of my disability, and its misconduct allegations were merely pretext for discrimination.
34. Respondent's history of mistreating me on the basis of my disability is evident from the earliest days following my return to work after my Traumatic Brain Injury. Following

my TBI, Respondent never looked at me the same way again. Instead of seeing the capable worker I had always been, it instead saw a stunted, disabled shell of a woman.

35. Respondent terminated me for these reasons.

36. As a result of Respondent's unlawful conduct, I have suffered loss of income, loss of contribution to retirement benefits, loss of meaningful work, loss of self-esteem, loss self-confidence, reputational harm, mental and emotional distress, and loss of familial and social relationships. As a result of Respondent's actions, I lost my home and the ability to regain custody of my children. Respondent's actions have had a devastating effect on my life and career.

(balance of this page intentionally left blank)

Based on the foregoing, I charge Respondent with an unlawful discriminatory practice relating to employment because of disability in violation of the New York Human Rights Law and the Americans with Disabilities Act, as Amended.

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.

Denise Ufland
Denise Ufland

Joseph Paul Doyka
Joseph Paul Doyka as Guardian

STATE OF NEW YORK)
COUNTY OF Erie) SS:

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

Denise Ufland
Denise Ufland

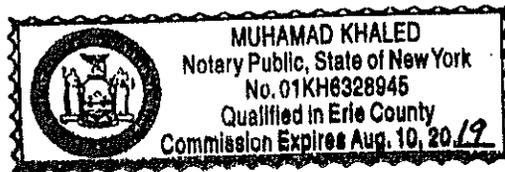
Joseph Paul Doyka
Joseph Paul Doyka as Guardian

Sworn before me this
3rd day of May, 2016

[Signature]

Notary Public, State of New York

Qualified in Erie County



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.

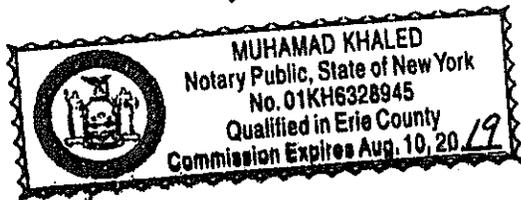
Alenise Vland
Sign your full legal name

Muhamad Khaled
Guardian

Subscribed and sworn before me
This 3rd day of May, 2016

[Signature]
Signature of Notary Public

County: ERIE Commission expires: 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.



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 31, 2016

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

Dear Ms. McCarthy:

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

File Name:	<i>Hilbert, Katrina v. ECMC and County of Erie</i>
Document Received:	Notice of Motion with Motion
Name of Claimant:	Katrina Hilbert 11066 Furness Parkway Medina, New York 14103
Claimant's attorney:	Michael J. Cooper, Esq. Cellino & Barnes, PC 451 Grider Street Buffalo, New York 14215

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP:dld
Enc.

Comm. 11D-5
Page 44 of 53

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

KATRINA HILBERT

Plaintiff,

v.

ERIE COUNTY MEDICAL CENTER
COUNTY OF ERIE

Defendants.

**NOTICE OF MOTION FOR
LEAVE TO FILE A LATE
NOTICE OF CLAIM**

Index No.: 805252/2016

PLEASE TAKE NOTICE, that upon the annexed Affidavit of Michael J. Cooper, Esq., dated May , 2016, attorney for the Plaintiff, Katrina Hilbert, will move this Court on June _____, 2016, at 9:30 a.m. or as soon as the matter may be heard at the New York State Supreme Court, for an Order pursuant to General Municipal Code Section 50-e(5) permitting the Plaintiff to serve a late Notice of Claim upon the Defendants, ERIE COUNTY MEDICAL CENTER and COUNTY OF ERIE. The grounds for the relief requested are that the Defendants acquired actual knowledge of the essential facts constituting the claim within the time specified in Subdivision 1 of section 50-e of the General Municipal Law, and the delay in serving the Notice of Claim did not substantially prejudice the Defendants in maintaining their defense on the merits.

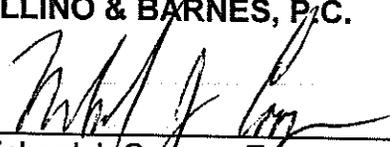
PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR section 2214(b) as answering Affidavits, if any, shall be served upon the undersigned at least seven (7) days before the return date of this motion.

motion.

DATED: Buffalo, New York
May 20, 2016

Yours, etc.,

CELLINO & BARNES, P.C.

By: 

Michael J. Cooper, Esq.
Attorneys for Claimant
451 Grider Street
Buffalo, NY 14215-3018
(716) 888-8888

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

KATRINA HILBERT

Plaintiff,

v.

ERIE COUNTY MEDICAL CENTER
COUNTY OF ERIE

Defendants.

**AFFIDAVIT IN SUPPORT OF
MOTION FOR LEAVE TO FILE
A LATE NOTICE OF CLAIM**

Index No.:

Michael J. Cooper, Esq., being duly sworn deposes and says:

1. I am an attorney at law duly admitted to practice law in the State of New York, and I am a partner in the Law Firm of Cellino & Barnes, P.C., attorneys for the plaintiff herein. As such, I am fully familiar with the facts and circumstances of this action.

2. I make this Affidavit in support of plaintiff's Motion to serve a late Notice of Claim upon the Defendants, ERIE COUNTY MEDICAL CENTER and COUNTY OF ERIE. This claim arises out of an accident which occurred on August 21, 2015, at approximately 8:00 a.m. at the ERIE COUNTY MEDICAL CENTER in Buffalo, New York. On that date, the plaintiff, KATRINA HILBERT, slipped on a wet spot on the floor in Room 856 of the ERIE COUNTY MEDICAL CENTER, which was created by the defendants' employees. A copy of the accident report is attached hereto as **Exhibit "A"**. A review of the accident report shows that the plaintiff immediately reported the

accident to hospital employees. All pertinent information was included in the accident report. The accident report indicates that the plaintiff sustained an injury to her left shoulder. The accident report indicates that Alan Katilus witnessed the accident. Since the accident was witnessed by an employee of the ERIE COUNTY MEDICAL CENTER and an accident report was prepared contemporaneous to the accident, the plaintiff contends that the defendants were on notice of the accident. Therefore, the plaintiff further contends that the defendants had a sufficient opportunity to investigate the accident.

3. When plaintiff, KATRINA HILBERT, originally retained the law firm of Cellino & Barnes, P.C. she advised your deponent that she had already filed a written claim in this case. I questioned her extensively about the written claim. She indicates that she signed a claim in writing against the ERIE COUNTY MEDICAL CENTER. Your deponent subsequently sent correspondence to the ERIE COUNTY MEDICAL CENTER requesting that an adjuster contact our law firm regarding the accident. A copy of that correspondence is attached hereto as **Exhibit "B"**. When your deponent heard no response, a second notice was mailed to the ERIE COUNTY MEDICAL CENTER on October 14, 2015. A copy of that correspondence is attached hereto as **Exhibit "C"**. The ERIE COUNTY MEDICAL CENTER never responded to either correspondence. Plaintiff's counsel also left several messages with Risk Management at the ERIE COUNTY MEDICAL CENTER which were never returned. These messages were left with both Ann Lazarus and her assistant, Bridgette Daley. Neither the plaintiff nor her counsel ever received any return phone calls from the defendants.

4. Since the defendants have not responded to written correspondence or numerous phone messages, plaintiff's counsel believes that a notice of claim was never actually filed in this case. Therefore, a notice of claim on the defendants was never filed in a timely matter pursuant to the General Municipal Law. However, it is the plaintiff's contention that the defendants have not been prejudiced by the delay because an accident report was prepared immediately and correspondence had been sent to the hospital advising them of the claim.

5. As a result of the accident, the plaintiff, KATRINA HILBERT, sustained a dislocated left shoulder. The plaintiff was taken to the emergency room of the Erie County Medical Center immediately after her accident. X-rays were taken and she was diagnosed with an anterior dislocation of the left shoulder. The shoulder was then put back into place by physicians in the emergency room. Since her discharge from the hospital, the plaintiff has treated with Dr. Thomas Duquin at UBMD Orthopedics. She continues to suffer from pain and limitation of range of motion in her left shoulder as a result of the accident.

6. The Court, in its discretion, may grant the Plaintiff, KATRINA HILBERT, leave to serve a late Notice of Claim upon the Defendants, ERIE COUNTY MEDICAL CENTER and COUNTY OF ERIE, even though the 90 day statutory time period to serve a Notice of Claim has expired. See General Municipal Law section 50-e(5).

7. General Municipal Law Section 50-e(5), in pertinent part, provides that "in determining whether or not to grant the extension, the Court shall consider, in

particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts, constituting the claim within the time specified in subdivision 1 or within a reasonable time thereafter. The Court shall also consider all other relevant facts and circumstances, including whether the delay in serving the Notice of Claim substantially prejudiced the public corporation in maintaining the defense on the merits." In the present case, the accident report indicates that the accident was witnessed by an employee of the ERIE COUNTY MEDICAL CENTER. The accident report also lists all of the pertinent facts regarding the fall and injuries sustained by the plaintiff, KATRINA HILBERT. Since an accident report was prepared by an employee of the defendant contemporaneous to the accident, the plaintiff contends that the defendants were not substantially prejudiced by the delay in serving the Notice of Claim. The Plaintiff contends that they had sufficient notice of the essential facts of the accident within a reasonable time after the accident.

8. The plaintiff, KATRINA HILBERT, contends that the ERIE COUNTY MEDICAL CENTER and COUNTY OF ERIE have not been substantially prejudiced in maintaining a defense on the merits. The accident report clearly provides the name of the witness to the accident as well as the location of the accident. The accident reports describes the exact injury which the plaintiff maintains was caused by the accident. The plaintiff also sent correspondence to the Risk Management Office of the ERIE COUNTY MEDICAL CENTER advising them that a claim was going to be pursued.

9. The Court should grant the plaintiff leave to serve her Notice of Claim upon the Defendants because the Defendants had notice of the essential facts

constituting the claim because it was immediately reported to the ERIE COUNTY MEDICAL CENTER and the Plaintiff received emergency medical care at the scene hospital where the accident occurred.

10. The Court should also grant the plaintiff leave to serve a Notice of Claim because the Defendants had an opportunity to investigate the circumstances underlying the claim in so far as it was witnessed by one of their own employees. The Defendants had access to all of the individuals involved in the accident for purposes of their investigation. The plaintiff cooperated with the defendants with respect to their investigation of this matter.

11. The Court should also grant the plaintiff leave to serve her Notice of Claim because the defendants have not been substantially prejudiced in maintaining their defense on the merits of this claim. The defendants had immediate knowledge of the accident and an immediate opportunity to investigate it and therefore have not been prejudiced this delay.

12. The plaintiff contends that there is a sufficient and reasonable excuse for the delay in timely serving her Notice of Claim. The plaintiff did not retain counsel until she believed she filed her written Notice of Claim. When correspondence to the defendants was not answered, plaintiff's counsel became concerned that a valid Notice of Claim had not been filed. Plaintiff's counsel contends that KATRINA HILBERT's belief that she filed a valid Notice of Claim was not unreasonable. The plaintiff contends that if the defendants had timely responded to correspondence and phone calls from plaintiff's counsel that a timely Notice of Claim could have been filed in

this case. Plaintiff contends that the defendants are partially responsible for the delay by failing to respond to any correspondence in this case.

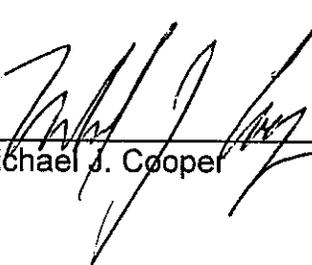
13. It is well established that the Court, in its discretion, may grant the claimant leave to serve a late Notice of Claim upon the respondents, even though the 90 day statutory time period to serve a Notice of Claim has expired so long as the time for commencement of an action has not expired. See General Municipal Law §50-3(5) and Rotoli v. Town of Gaines, 184 AD2d 1085 (4th Dept 1992). In the present case, the accident occurred on August 21, 2015. Therefore the statute of limitations has not expired to commence an action.

14. The Court should grant the plaintiff leave to serve her Notice of Claim upon the defendants because the defendants had notice of the essential facts constituting the claim because the plaintiff received emergency medical treatment at the hospital where the accident occurred and an accident report was immediately prepared by a hospital employee. See Nationwide Insurance v. Village of Alexandria Bay, 299 AD2d 855. This case further indicates that the Court should grant leave to the plaintiff to serve her late Notice of Claim because the defendants have not been substantially prejudiced in maintaining their defense on the merits of this claim. The defendants had immediate knowledge of this accident and an immediate opportunity to investigate it and therefore had not been prejudiced by the delay.

15. The plaintiff contends that she has satisfied all the factors enumerated in General Municipal Law §50-e(5). The presence or absence of any one enumerated factor in the statute governing claims against municipalities is not

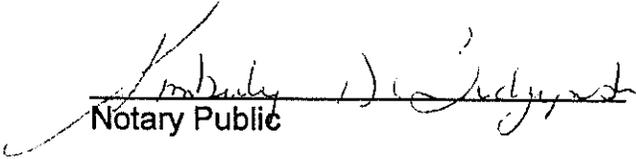
necessarily determinative of the application to file a late Notice of Claim, and the list of statutory factors is directed rather than exclusive. See Rotoli v. Town of Gaines, 184 AD2d 1085 (4th Dept 1992).

WHEREFORE, for all of the reasons set forth herein, your deponent respectfully requests permission to serve the defendants with the attached Notice of Claim (**Exhibit "D"**) and for any relief to this Court that may seem just and proper.



Michael J. Cooper

Sworn to before me this 23rd day
of May, 2016.



Notary Public

KIMBERLY S. BUDZYNSKI
COMMISSIONER OF DEEDS
In and For the City of Buffalo, New York
My Commission Expires 12/31/ 16