



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: August 15, 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 eight (8) new claims brought against the County of Erie. The claims are as follows:

Claim Name

- Gail Anne Taylor v. County of Erie, et al.
- Patrice Atwood, et al. v. ECBOE
- Terry Daum v. County of Erie
- Bernadette Aja v. County of Erie
- Ted Morton v. County of Erie, et al.
- Kevin T. Stocker v. ECBOE, et al.
- Larry Himelein v. Erie Community College
- Angela Adam v. County of Erie, et al.

MMP:dld
Attachments



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

August 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>Taylor, Gail Anne v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Gail Anne Taylor 401 Argonne Drive Kenmore, New York 14217
Claimant's attorney:	Thomas M. Mercure, Esq. Lipsitz Green Scime Cambria LLP 42 Delaware Avenue, Suite 120 Buffalo, New York 14202-3924

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. 17D-10

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In the Matter of the Claim of

GAIL ANNE TAYLOR,

Claimant,

- against -

CITY OF BUFFALO,
CRANE BRANCH LIBRARY,
THE BUFFALO SEWER AUTHORITY,
BUFFALO WATER BOARD,
CITY OF BUFFALO DEPARTMENT OF
PUBLIC WORKS, PARKS & STREETS,
ERIE COUNTY WATER AUTHORITY,
ERIE COUNTY.

NOTICE OF CLAIM

RECEIVED
JUL 27 2016
ERIE COUNTY
DEPARTMENT OF LAW
Mont

TO: CITY OF BUFFALO;
CRANE BRANCH LIBRARY;
THE BUFFALO SEWER AUTHORITY;
BUFFALO WATER BOARD;
CITY OF BUFFALO DEPARTMENT OF
PUBLIC WORKS, PARKS & STREETS;
ERIE COUNTY WATER AUTHORITY; and
ERIE COUNTY.

This paper received at the
Erie County Attorney's Office
from Gary Bevilacqua
the 27 day of July, 2016
at 3:21 a.m./p.m.
Kristen M. Walker
Assistant County Attorney

PLEASE TAKE NOTICE, that GAIL TAYLOR, has and hereby makes claim against CITY OF BUFFALO, CRANE BRANCH LIBRARY, THE BUFFALO SEWER AUTHORITY, BUFFALO WATER BOARD, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS, ERIE COUNTY WATER AUTHORITY and ERIE COUNTY, and in support of said claim states the following:

1. The Post Office address of the claimant is 401 Argonne Drive, Kenmore, New York 14217.

2. The attorneys for the claimant are LIPSITZ GREEN SCIME CAMBRIA LLP, and their Post Office address is 42 Delaware Avenue, Suite 120, Buffalo, New York 14202-3924.

3. The claim arose on or near the sidewalk on Elmwood Avenue near its intersection with Highland Avenue and/or in front of the Crane Branch Library located at 633 Elmwood Avenue (mailing address: 185 Highland Avenue, Buffalo, New York), in the City of Buffalo, County of Erie and State of New York.

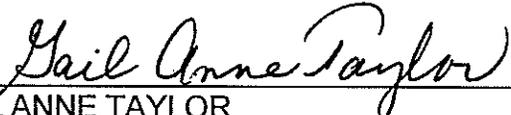
4. The claim arose in substance as follows: On the 23rd day of June, 2016, at approximately 5:30 p.m., the claimant, GAIL ANNE TAYLOR, while traversing on the sidewalk at the aforesaid premises, was caused to trip and fall on a defective/inadequately repaired sidewalk and/or surrounding area, resulting in serious injuries to the claimant.

5. Upon information and belief, the incident herein described and the resultant injuries and damages sustained were caused as a result of the negligence, carelessness, recklessness and/or unlawful conduct on the part of the agents, servants and/or employees of CITY OF BUFFALO, CRANE BRANCH LIBRARY, THE BUFFALO SEWER AUTHORITY, BUFFALO WATER BOARD, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS, ERIE COUNTY WATER AUTHORITY and ERIE COUNTY, and more particularly, among other things, in failing and omitting to maintain, repair, design and/or construct said sidewalk and/or surrounding area.

6. Upon information and belief, as a result of the aforesaid incident, the claimant, GAIL ANNE TAYLOR, sustained severe bodily injuries and was painfully and seriously injured; was rendered sick, sore, lame and disabled; sustained pain and suffering and shock to her nerves and nervous system; and more particularly, GAIL ANNE TAYLOR, sustained injuries in the nature of left wrist, right knee and other various injuries. Upon information and belief, these injuries will result in permanent defects.

WHEREFORE, claimant requests that CITY OF BUFFALO, CRANE BRANCH LIBRARY, THE BUFFALO SEWER AUTHORITY, BUFFALO WATER BOARD, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS, ERIE COUNTY WATER AUTHORITY and ERIE COUNTY honor and pay the claim on behalf of GAIL ANNE TAYLOR.

DATED: Buffalo, New York
July 6, 2016



GAIL ANNE TAYLOR

LIPSITZ GREEN SCIME CAMBRIA LLP

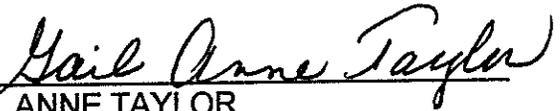
By: 

THOMAS M. MERCURE, ESQ.

Attorneys for Claimant
Office and P.O. Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333

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

GAIL ANNE TAYLOR, being duly sworn deposes and says that she is the claimant above named; and makes this claim on behalf of self; she has read the foregoing claim and knows the contents thereof; the same is true to the knowledge of the claimant except for the matters herein alleged upon information and belief, and as to those matters, she believes them to be true.


GAIL ANNE TAYLOR

Sworn to before me on this
12th day of July, 2016.



Notary Public

THOMAS M. MERCURE
Notary Public State of New York
Qualified in Erie County
My Commission Expires March 17, 2019



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

August 5, 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>Atwood, et al v. Markeith Pridgen et al (Respondent-candidates) and COE Board of Elections (Respondent)</i>
Document Received:	Order to Show Cause
Name of Claimant:	Patrice Atwood, et al.
Claimant's attorney:	Rebecca Hoffman, Esq. 6506 East Quaker Road Orchard Park, New York 14127

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. 17D-10

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At a Special Term of the Supreme Court held in and for the County of Erie, at the Courthouse in the City of Buffalo, New York on the ___ day of July 2016.

HON. TRACEY A. BANNISTER, J.S.C.

HON. _____, J.S.C.
PRESIDING JUSTICE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS

JUL 27 2016

ERIE COUNTY
CLERK'S OFFICE

In the Matter of the Application of

PATRICE ATWOOD - ELL 12
21 Riley Street
Buffalo, NY

Petitioner-Agrieved Candidate

SHIRLEY PARKER-WATTS - ELL 23
65 Beckwith Street
Buffalo, NY

MARIE CHEEK - ELL 31
132 Spring Street
Buffalo, NY

RAYMOND MOSS - FIL 9
160 Wendt Street
Buffalo, NY

PATRICIA EVANS - FIL 11
75 Moselle street
Buffalo, NY

ARCHIE ROLAND - LOV 5
109 Fisher Street
Buffalo, NY

TILLMAN C. WARD - LOV 13
834 Walden Avenue, Unit 1
Buffalo, NY

KIMBERLY L. JOHNSON - MAS 1
76 Benwood Avenue
Buffalo, NY

ARLENE OGLETREE - MAS 27
19 Elsie Place
Buffalo, NY

TERRI J. GRAVES - MAS 33
111 Cambridge Avenue
Buffalo, NY

LOIS D. Young - Unit 4
153 Winspear Avenue
Buffalo, NY

Petitioner-Objectors

**ORDER TO
SHOW CAUSE**

INDEX NO.

1 2016-000108

Assigned Justice
Hon.

Comm. 17D-10

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PAID
07/27/2016/ 14:51:11
ERIE COUNTY CLERK
RCPT # 16122945
I 2016000108
ERIE CO ERE JUL 29 10 PM 1201

VS

MARKEITH PRIDGEN - ELL 12

753 Kensington Avenue
Buffalo, NY 14215

SYLVESTER TERRELL - ELL 12

104 Grey Street
Buffalo, NY 14208

SAMUEL DAVIS - ELL 23

427 Sycamore Avenue
Buffalo, NY 14204

MAURICE MCCRAY - ELL 23

246 Madison Street
Buffalo, NY 14206

MARY WALKER - ELL 31

47 Mary B. Talber Blvd
Buffalo, NY 14204

GEORGE MILLER - ELL 31

210 Jefferson Avenue - Unit 204
Buffalo, NY 14204

DAVION WASHINGTON - Fil 9

&

FREDERICK DEAN - FIL 9

66 Burlington Avenue
Buffalo, NY 14215

LOSHRANDRA ROACH - FIL 11

162 Goembel Avenue
Buffalo, NY 14211

WILLIE BRAXTON - FIL 11

161 Goembel Avenue
Buffalo, NY 14211

AARON LOTT - LOV 5

150 Harriett Avenue
Buffalo, NY 14215

ROCHELLE CORNWELL - LOV 5

155 Freund Street
Buffalo, NY 14215

DAMON JOHNSON - LOV 13

23 Briscoe Avenue
Buffalo, NY 14211

ROLAND JOHNSON - LOV 13

63 Lang Avenue
Buffalo, NY 14211

JAMELLA JAMES - MAS 1

83 East Morris Avenue

<p>Buffalo, NY 14214</p> <p>BERNARD BROWN - MAS 1 1114 Bennett Village Terrace Buffalo, NY 14214</p> <p>SANDARA BAINES - MAS 27 166 East Ferry Street Buffalo, NY 14208</p> <p>KENNETH STEPHENS - MAS 27 70 Northland Avenue Upper Buffalo, NY 14208</p> <p>DOLORES WILKENSON - MAS 33 138 Cambridge Avenue Buffalo, NY 14215</p> <p>JIMMIE STRONG - MAS 33 123 Cambridge Avenue Buffalo, NY 14215</p> <p>DRAKE CHANEY - UNI 4 2803 Main Street Buffalo, NY 1421--</p> <p>ROXANNE LARKINS - UNI 4 153 Winspear Avenue Buffalo, NY 14215</p> <p style="text-align: right;">Respondent-Candidates.</p>	
<p>ERIE COUNTY BOARD OF ELECTIONS, Leonard R. Lenihan and Ralph M. Mohr, Commissioners of and Constituting the Erie County Board of Elections 134 West Eagle Street Buffalo, NY 14202</p> <p style="text-align: right;">Respondent</p>	

TO THE NEW YORK STATE SUPREME COURT – ERIE COUNTY

Upon Petitioners’ Verified Petition dated the 27th day of July 2016, and
 AFTER DUE DELIBERATION having been had and in order to comply with Election
 Law Section 16-116’s requirement that these proceedings be “summarily determined” and “have
 preference over all other cause in all courts,” it is hereby,

ORDERED, that the Respondents **SHOW CAUSE BEFORE THIS COURT**, at a
 Special Term. of Supreme Court. to be held in and for the County of Erie, State of New York, in
 the Courthouse at ___ 25 Delaware Avenue, ~~X~~ 50 Delaware Avenue, ___ 92 Franklin

Street, Buffalo, NY in **Part 31**, on the 1 day of August 2016 at 2:00 o'clock in the a.m./ p.m. of that day, or as soon thereafter as counsel can be heard, and, if the Court determines that testimony need be taken, it is

ORDERED, that the parties appear before this court in the above **Part 31** on the 2nd day of Aug, 2016 at 9 o'clock in the a.m. / p.m. of that day, or as soon thereafter as counsel can be heard to present testimony of witnesses and other evidence in support of or opposition to the claims herein. as to

WHY an ORDER should not be made and entered herein, pursuant to Election Law Articles 6 and 16, and including, but not limited to, Sections 6-130, 6-132, 6-134, 6-136, 16-100, and 16-102, **granting the following relief against the Respondents:**

1. An Order, pursuant to Election Law Articles 6 and 16, invalidating all of the Democratic Party Designating Petitions of all of the Respondent-Candidates to be a candidate for the party office of Member of the Erie County Democratic Committee, by reason of the fact that said petitions contains less than the minimum number of valid signatures, as required by Election Law Section 6-136, in order for a person's name to appear on the ballot on the Democratic Party line in the September 13, 2016 primary election; and
2. An Order determining that the Democratic Designating Petitions of Respondent-Candidates are invalid (a) by reason of multiple failures to obtain a sufficient number valid signatures from registered Democratic Party voters in the respective Election Districts referred to in the attached Petition in violation of Election Law § 6-136, and (b) by reason of failure to comply with the designating petition requirements of Election Law Article 6, particularly § 6-132, 6-134 & 6-136, and the rules of the New York State Board of Elections, and (c) by multiple instances of fraud and forgery in the various designating petitions challenged herein; and

3. An Order directing the Erie County Board of Election to invalidate all of the Democratic Designating Petitions of Respondent-Candidates to be a candidates for the party office of Member of the Erie County Democratic Committee and, if the Erie County Board of Elections has made an administrative determination of validity prior to the conclusion of this proceeding, overruling and setting aside the decision of the Erie County Board of Elections and directing the Erie County Board of Elections to invalidate the designating petitions of Respondent-Candidates and directing the Erie County Board of Elections to print ballots for the September 13, 2016 Primary Election **without** the names of the Respondent-Candidates appearing thereon; and
4. An Order directing the Erie County Board of Elections to produce to the Court on the return date of this Petition and Order to Show Cause, and all subsequent court dates, the original petitions of Respondent-Candidates, the original GENERAL and SPECIFIC OBJECTIONS to the petition filed by Petitioner-Objectors and all documents constituting the records of proceedings by, of, and before the Erie County Board of Elections in relation to the petitions of Respondent-Candidates and the Board's actions with respect thereto;
5. An Order granting such other, further and different relief as the Court may deem just and appropriate, including costs and disbursements.

SERVICE OF PROCESS:

And it is further.

ORDERED, that service of a conformed copy of this Order to Show Cause and the underlying Verified Petition, upon the Respondent-Candidates and the Respondent Erie County Board of Elections shall be deemed good and sufficient if accomplished no later than 5 p.m. on the 28 day of _____ July, 2016 as follows:

1. ALL Respondent-Candidates:

By delivery to each Respondent-Candidate listed on this Order to Show Cause in any manner authorized by CPLR Section 308 or by overnight delivery service (as defined by CPLR § 2103(b)(6)) to each Respondent-Candidate at their address as listed in the caption of this Order to Show Cause, with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

2. Respondent ERIE COUNTY BOARD OF ELECTIONS:

By delivery to a person authorized to accept service at the offices of such Respondent ERIE COUNTY BOARD OF ELECTIONS at 134 West Eagle Street, Buffalo, NY 14202 in a manner authorized by CPLR Section 308 or by overnight delivery service (as defined by CPLR § 2103(b)(6)) to the Board at 134 West Eagle Street, Buffalo, NY 14202 with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

PRODUCTION OF ORIGINAL DOCUMENTS

and it is further,

ORDERED, that the Respondent ERIE COUNTY BOARD OF ELECTIONS shall produce to the Court on the return date of this Petition and Order to Show Cause, and all subsequent court dates, the original Democratic Party Designating Petitions of Respondent-Candidates, the original GENERAL and SPECIFIC OBJECTIONS to the petition filed by Petitioners, and all documents constituting the records of proceedings by, of, and before the ERIE COUNTY BOARD OF ELECTIONS in relation to the petition of Respondent-Candidate Hadar Borden and the Board's actions with respect thereto;

RESPONSIVE PAPERS

and it is further

ORDERED, that the Respondents shall file their verified answer to the petition, and affidavits or other responding papers, including motion papers, to the Court and deliver them to Petitioners' counsel, no later than the 10:00 (m) / p.m. the 1st day of Aug ~~July~~ 2016; and it is further

ORDERED, that the Respondents, in their answering papers, shall set forth an e-mail address to which communications from the Court and each party's attorney may transmit an electronic copy of responding and/or reply papers.



Justice of the Supreme Court
County of Erie

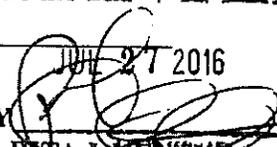
GRANTED: July 27, 2016

GRANTED

HON. TRACEY A. BANNISTER, J.S.C.

Court Clerk

BY


ROSA J. VENTURA
COURT CLERK



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

August 8, 2016

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

Dear Ms. McCarthy:

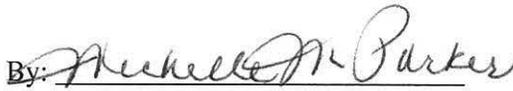
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Daum, Terry v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Terry Daum DIN: 97A1295 Wende Correctional Facility Wende Road PO Box 1187 Alden, New York 14004-1187
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

(dld)

MMP:dld
Enc.

Comm. 17D-10

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

RECEIVED
JUL 13 2016

mmf

ERIE COUNTY
DEPARTMENT OF LAW

TERRY DAUM,

Claimant,

- against -

NOTICE OF CLAIM

THE COUNTY OF ERIE,

Respondent.

PLEASE TAKE NOTICE, that pursuant to Section 50 (e) of the General Municipal Law, the undersigned, Terry Daum, intends to file a claim against the County of Erie.

The post office address of the claimant is: Wende Correctional Facility, Post Box 1187, Alden, New York, 14004.

The claimant is submitting this notice of claim pro se.

The nature of the claim is as follows: This claim involves claimant being placed in confinement, loss of all privileges, including visits and the loss of good-time, for a period of time, due to Erie County Medical Center, disclosing privileged medical information, violating the federal Health Insurance Portability and Accountability Act of 1996 (HIPPA).

On or about May 17th, 2016, claimant, a prisoner at Wende Correctional Facility, was transported to Erie County Medical Center (ECMC), for a pre-scheduled surgery. During the preliminary process, ECMC staff

Comm. 17D-10

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member, discussed openly, claimant's responses to questions, involving the usage of drugs, could have an effect during the surgery, such as, heart complications and or death. ECMC staff members disclosed this information by discussing claimant's responses in the presence of Wende Correctional Facility transportation officers, who in turn, participated in the discussions. The surgery was canceled.

As stated, this violation occurred at ECMC, 462 Grider Street, Buffalo, New York, 14215

As a result of the incident, claimant sustained disciplinary action on June 7th, 2016, resulting to 45 days on Keeplock (confinement), 90 days loss of all visits, phones, recreation, packages, commissary, television privileges and one month loss of good time. Claimant was also denied a preference transfer (a facility close to New York City [an area where claimant resides, prior to conviction]), as a direct result of ECMC negligence.

Respectfully
Terry Daum
Terry Daum,
- claimant -

VERIFICATION

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

Terry Daum, being duly sworn, deposes and says, I am the claimant herein named, I have read the foregoing notice of intention to file a claim against the County of Erie, and know its contents, the same is true to my own knowledge, except as to those matters stated to be alleged on information and belief, and as to those matters, I believe it to be true.

Respectfully
Terry Daum
Terry Daum
- Claimant -

Sworn To Before
Me this 8th day
of JULY, 2016



KENNETH M. DECKER
Registration No. 0100000000
Notary Public State of New York
Qualified in Niagara County
My Commission Expires October 23, 2018



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

August 8, 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>Aja, Bernadette v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Bernadette Aja 124 Gina Meadows East Amherst, New York 14051
Claimant's attorney:	Robert D. Berkun, Esq. Robert D. Berkun, Esq. 43 Court Street, Suite 930 Buffalo, New York 14202

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. 17D-10
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R E C E I V E D
JUL 13 2016
[Handwritten signature]

STATE OF NEW YORK : COUNTY OF ERIE

ERIE COUNTY
DEPARTMENT OF LAW

**In the Matter of the Claim of
BERNADETTE AJA,**

NOTICE OF CLAIM

Against,

COUNTY OF ERIE.

TO: Michael A. Siragusa, Erie County Attorney
95 Franklin Street, Room 164
Buffalo, New York 14202

PLEASE TAKE NOTICE that the above-named Claimant, Bernadette Aja, pursuant to the General Municipal Law and applicable statutes does hereby make a claim against the County of Erie for personal injuries sustained due to the negligence and recklessness of the County of Erie and/or its employees, agents and/or contractors, and in support thereof, the Claimant states as follows:

1. The name and post office address of the Claimant and her attorney are as follows:

- a) Bernadette Aja, 124 Gina Meadows, East Amherst, New York 14051;
- b) The attorney for Claimant is Robert D. Berkun, Esq., 43 Court Street, Suite 930, Buffalo, New York 14202.

2. The nature of claim is for negligence and recklessness resulting in personal injuries, pain and suffering and other damages sustained by the Claimant as a result of the County of Erie and/or its employees, agents and/or contractors, who created a hazardous condition on the public sidewalk, and further, failed to properly maintain and inspect work performed on Hopkins Road, near the corner of Hopkins Road and Fairwoods Drive on the sidewalk, causing an elevation and/or irregular surface on a portion of the sidewalk, which caused Plaintiff who was lawfully

proceeding down the sidewalk to trip and be propelled to the ground with such force she sustained a compound fracture of her left wrist requiring open reduction and internal fixation, with hardware placed in the left wrist, resulting in scarring, as well a total of five (5) fractures of the left arm, among other injuries due to this fall.

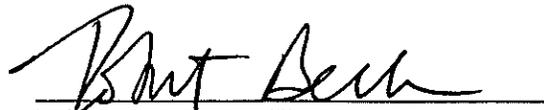
3. The incident giving rise to this claim occurred on the 16th day of April, 2016, at approximately 10:30 a.m. to 10:45 a.m.

4. The injuries sustained by the Claimant are due to the negligence and recklessness of the County of Erie and/or its employees, agents and/or contractors, for their acts of omission and commission whereby they failed to remove or remediate a hazardous condition, which they created and/or left to remain on a public walkway, in breach of a duty owed to Claimant not to create and/or permit a hazardous condition to exist and persist on a public walkway. The breach of this duty was the proximate and actual cause of the injuries sustained by Plaintiff.

5. The County of Erie and/or its employees, agents and/or contractors failed to exercise due care and failed to supervise and/or inspect the work performed by the County of Erie and/or its employees, agents and/or contractors, resulting in serious bodily injuries to the Claimant.

WHEREFORE, the Claimant requests that the County of Erie honor and pay the aforesaid claim.

DATED: Buffalo, New York
July 7, 2016

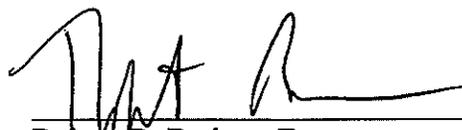

ROBERT D. BERKUN, ESQ.
Attorney for Plaintiff
Office and Post Office Address
930 Convention Towers
43 Court Street

Buffalo, New York 14202
(716) 856-4080

VERIFICATION

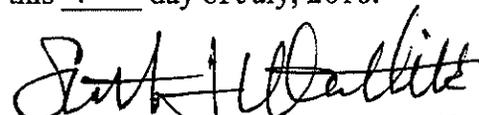
COUNTY OF ERIE)
)
STATE OF NEW YORK) ss:

I, ROBERT D. BERKUN, attorney for Claimant in the within action, have read the foregoing Notice of Claim, and know the contents thereof; the same is true to the best of my knowledge after communication with my client, except any matters stated to be alleged upon information and belief, and as to any matters so stated, I believe them to be true. This Verification is made as attorney for the Claimant, as provided for in New York General Municipal Law.



Robert D. Berkun, Esq.

Subscribed and sworn to before me
this 7th day of July, 2016.



NOTARY PUBLIC

SCOTT J. WHITEBECK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires July 19, 20 20



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

August 5, 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>Morton, Ted v. County of Erie and Steven Schwartz in his Individual and Official Capacities as Chair of the Board of Ethics</i>
Document Received:	Summons and Complaint
Name of Claimant:	Ted Morton 11 Calla Way Cheektowaga, New York 14225
Claimant's attorney:	Jeremy A. Colby, Esq. Webster Szanyi, LLP 1400 Liberty Building Buffalo, New York 14202

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. 17D-10

Page 24 of 59

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

TED MORTON
11 Calla Way
Cheektowaga, New York 14225

Plaintiff(s)

v.

County of Erie and STEVEN SWARTZ in his
Individual and Official Capacities as Chair of the
Board of Ethics

Defendant(s)

Civil Action No. 1:16-CV-00617

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) COUNTY OF ERIE
95 Franklin Street
Room 604
Buffalo, New York 14202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Jeremy A. Colby, Esq.
Webster Szanyi LLP
1400 Liberty Building
Buffalo, New York 14202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: 07/29/2016

Signature of Clerk or Deputy Clerk

Civil Action No. 1:16-CV-00617

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TED MORTON,

Plaintiff,

Index No.:

vs.

COUNTY OF ERIE and
STEVEN SWARTZ in his individual and official
Capacities as Chair of the Board of Ethics

Defendants.

COMPLAINT

The Plaintiff, Ted Morton, by and through his attorneys, Webster Szanyi LLP, as and for his complaint herein alleges as follows:

THE PARTIES

1. At all times relevant, Plaintiff was a resident of the Town of Cheektowaga, County of Erie and State of New York.
2. At all times relevant, Defendant County of Erie was and is a municipal corporation located in the County of Erie and State of New York.
3. As a subdivision of the County, the Erie County Board of Ethics ("the Board") is not an entity that may be sued.
4. At all times relevant, defendant Steven Swartz was and is the Chair of the Board of Ethics for the County of Erie, and is resident of the County of Erie.

JURISDICTION AND VENUE

5. This Court has federal question jurisdiction over Plaintiff's claims for violation of his constitutional rights under 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. §1983, and its jurisdiction to declare rights under 28 U.S.C. §2201.

6. This Court has supplemental jurisdiction over the state law claims raised herein pursuant to 28 U.S.C. §1367.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because the events giving rise to claims herein occurred in this District.

NOTICE OF CLAIM

8. On or about May 20, 2016, a notice of claim was served in accordance with § 50-e of the General Municipal Law. Other correspondence by Plaintiff or his attorneys also satisfied the notice of claim requirements and otherwise served as notices of claims.

9. Thirty days have elapsed since the service of the notices of claims and adjustment or payment thereof has been neglected or refused.

FACTUAL BACKGROUND

10. Plaintiff is the duly elected Legislator for the Eighth District of Erie County. As such, he annually completes ethics disclosure forms submitted to the Erie County Board of Ethics ("the Board").

11. Plaintiff completed an ethics disclosure form (“the Form”) in May 2014 with respect to calendar year 2013.

12. In October, 2015, Plaintiff’s political opponents purportedly complained to the Board with respect to Plaintiff’s Form.

13. On October 13, 2015, Plaintiff filed an amended or supplemental disclosure form (“Amended Form”) to correct a mistake – the Form disclosed then existing liabilities as of May 2014, as opposed to liabilities existing as of December 31, 2013.

14. Before filing the Form in May of 2014, Plaintiff had paid off several debts that were existing as of December 31, 2013.

15. The issue was raised in October 2015 during Plaintiff’s re-election campaign.

16. In November of 2015, the Board Chair, Steven Schwartz, first contacted Plaintiff’s legislative assistant, Robert Matthews. This meeting was in person with Mr. Matthews.

17. The message conveyed by Mr. Schwartz at that time, ostensibly on behalf of the Board, was, in sum or substance: “this appears to be politics – political activists trying to make something out of nothing, but we have to look into it.”

18. By letter dated December 7, 2015, Chairman Schwartz wrote to Plaintiff responding to the Amended Form and requesting additional information concerning the debts disclosed in the Form and Amended Form, including the dates such debt repayments were made. The Board’s letter further

sought documentation showing: “the amount of the debt, the name and address of the creditor, the nature of the debt, the amounts and dates of any payments, and any documents from the creditor which would prove that the obligation has now been satisfied.” A copy of this letter is attached as **Exhibit A**.

19. The Board’s letter further asked Plaintiff to “state precisely when, from whom you learned of the error, and how you first learned that your form was in error as you have stated in your correspondence of October 13, 2015.” The Board requested a response by January 15, 2016.

20. By letter dated January 14, 2016, Plaintiff wrote a letter to the Board in response to its letter request of December 2015. Plaintiff’s letter provided the requested documentation and information concerning the debts. Plaintiff’s letter also stated

First, I learned of the error in my 2013 Disclosure Filing in October of 2015, during my reelection campaign. It was brought to my attention that I had misread the “when-as” dates regarding any debts outstanding. I had paid off in March 2014, two of the three debts I had outstanding on 12/31/13. When I completed the original form in May 2014, since those two debts were paid off, I incorrectly did not include them. I did not seek assistance from my Legislative colleagues. Had I, this oversight on my part would have been avoided. Therefore, a revised 2013 Ethics disclosure form was submitted on October 13th, 2015.

21. The Board sent Plaintiff a letter dated February 1, 2016 that imposed a \$500 fine (“the Fine”) based on the Board’s determination “that a violation of the Ethics Code has occurred to the extent that you should have known that the statements made on the form were erroneous.” A copy of this letter is attached as **Exhibit B**.

22. In other words, the Board did not even definitively find that Plaintiff “should have known” that his statements on the Form were erroneous. This alone requires that the Fine be vacated. Moreover, the “should have known” standard is *ultra vires*.

23. The Board’s letter further noted that: “Section 9 of the Ethics Law provides that civil penalties may be imposed by the Board of Ethics or the matter may be forwarded to the District Attorney’s office for further handling. In this instance, the Board has decided that the imposition of a civil penalty in at [sic] amount of Five Hundred Dollars (\$500.00) would be appropriate. We believe that this is a measured response taking into account all of the facts and circumstances presented.”

24. The Board’s letter then informed Plaintiff that he had thirty days to file a request for reconsideration.

25. Before imposing the Fine, the Board **never**: (A) provided Plaintiff with written notice of the charge being considered against him or the complaint that was purportedly filed against him; (B) upon information and belief, docketed this matter as required by the Board’s own Rules and Regulations; (C) interviewed Plaintiff or any other witnesses that Plaintiff is aware of; (D) provided Plaintiff with a hearing or an opportunity to provide witnesses or to confront accusers; (E) provided Plaintiff with a copy of the Board’s Rules and Regulations (as is required by the Board’s own Rules and Regulations); or (F) informed Plaintiff that he had the right to engage counsel or to appeal (aside from the

limited information concerning the right to “request” reconsideration within thirty days of the Board’s February 1, 2106 letter imposing the Fine).

26. Plaintiff objected and sought reconsideration by letter dated February 29, 2016. A copy of this letter is attached as **Exhibit C**. The letter pointed out to the Board, among other things, that, under the Local Law that created the Board, Local Law (10-1989) – a copy of which is attached as **Exhibit D** – provides a prescribed disclosure form that requires the disclosure of debts “as of the date of the filing.” Ex. C (citing Section 19, page 36 of the Local Law). In other words, the Form complied with Local Law 10-1989, from which the Board deviated when seeking to fine Plaintiff.

27. Plaintiff also pointed out that his erroneous filing was not knowingly made – which was never refuted and which thus requires the Fine to be vacated as *ultra vires*.

28. The Board affirmed its prior determination by letter dated April 4, 2016. A copy of this letter is attached as **Exhibit E**.

29. In an effort to resolve the matter and to avoid wasting taxpayer funds, Plaintiff sent the Board a letter dated May 6, 2016. A copy of this letter is attached as **Exhibit F**. This letter pointed out additional reasons why the Fine was unfounded and deficient. For example, Plaintiff noted that the disclosure form was ambiguous, and that he provided the information required by the Local Law (i.e., debts existing as of the date of filing), which is all that the Board is authorized to require.

30. Plaintiff’s May 6 letter also pointed out to the Board that:

[t]he Board purports to impose a fine on me based on its ambiguous determination that ‘a violation of the Ethics Code has occurred to the extent that you should have known that the statements made on the form were erroneous.’ Board letter dated Feb. 1, 2016 (emphasis added). Although this ‘should have known’ language is contained in the Local Law, such language is not contained in the state statute that authorized or enabled the County to enact the Local Law in the first place. As a result, the Local Law exceeds the scope of the enabling legislation, Section 812 of the General Municipal Law. Section 812(6) provides in relevant part that:

A reporting individual who knowingly and willfully fails to file an annual statement or financial disclosure or who knowingly and willfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure . . . shall be assessed a civil penalty . . . Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement . . .

In other words, the state statute that confers authority upon the Board does not permit the Board to impose any penalty for a purported “should have known” error or omission.

31. Plaintiff’s letter also indicated that he would outline additional deficiencies if the Board did not reconsider – as is now the case.

32. The Board discussed the matter at its meeting of May 9, 2016.

33. The Board’s counsel, Ms. Leslie Ortiz-Fogg, contacted Plaintiff’s counsel on May 13, 2016 and indicated that all further communications should be made through counsel and that the Board’s decision “stands.” The Board did not address Plaintiff’s Due Process concerns.

34. Plaintiff served a letter notice of claim on the Board on May 20, 2016. A copy of this letter is attached as **Exhibit G**.

35. By letter dated June 16, 2016, Exhibit G was delivered to the Erie County Attorney. A copy of this letter is attached as **Exhibit H**.

36. The Board met on June 16, 2016. At this meeting, the Board discussed Plaintiff's correspondence, but took no action to remedy or correct any of the deficiencies or Due Process violations identified by Plaintiff or his attorneys.

Due Process Violations

37. The Board violated Plaintiff's state and federal Due Process rights. The Board purportedly imposed the Fine on Plaintiff despite failing to have followed its own Rules and Regulations governing such proceedings, including the failure to provide the **most basic due process protection: written notice of the complaint or charge being asserted** against Plaintiff.

38. The Board's letter of December 7, 2015 did not provide notice and an opportunity to be heard. That letter did not inform Plaintiff that the Board was investigating a complaint or otherwise considering the imposition of a fine. Rather, the letter simply requested additional information with respect to Plaintiff's Amended Form. The closest that the Board came to informing Plaintiff that it might consider the imposition of a fine was its generic statement that: "the Board takes no position at this time with respect to accepting any revised form and whether any violations of the Code of Ethics exist." Ex. A.

39. And this failure was not cured by the indirect verbal communication from Chairman Schwartz to Plaintiff's employee, Robert Matthews.

40. The Board's failure to provide basic written notice of the charge or complaint being considered against Plaintiff was exacerbated by the Board's failure to provide any type of hearing whatsoever.

41. Indeed, even people charged with a minor parking infraction, and who are subject to a much lower fine (actual and range) are afforded (and entitled to) a hearing. The Board, however, did not provide such a basic due process protection to the Plaintiff.

42. The Board's purported finding is also deficient and *ultra vires*.

43. The Board's letter of February 1, 2016 stated that the Board "determined that a violation of the Ethics Code has occurred **to the extent that you should have known** that the statements made on the form were erroneous." (emphasis added).

44. This does not even definitively find that Plaintiff should have known that the Form was erroneous – instead only finding "to the extent that" Plaintiff should have known.

45. More important, however, the Board seeks to impose a constructive notice or "should have known standard." Although this language is contained in Local Law (10-1989), the Local Law exceeds the scope of the

enabling legislation, Section 812 of the General Municipal Law. Section 812(6) provides in relevant part that:

A reporting individual who knowingly and willfully fails to file an annual statement or financial disclosure or who knowingly and willfully with intent to deceive makes a false statement or gives information which such individual **knows to be false** on such statement of financial disclosure . . . shall be assessed a civil penalty. . . . Notwithstanding any other provision of law to the contrary, **no other penalty, civil or criminal may be imposed** for a failure to file, or for a false filing, of such statement . . .

(emphasis added).

46. In other words, the state statute that confers authority upon the Board does not permit the Board to impose a penalty under a “should have known” standard. Indeed, General Municipal Law Section 812 only lists errors or omissions that are made “knowingly and willfully **with intent to deceive**” or “gives information which such individual **knows to be false** on such statement of financial disclosure.” (emphasis added). Unless one of these two mental states are satisfied, “no other penalty . . . may be imposed.”

47. That, however, is precisely what the Board attempts to do here by seeking to punish Plaintiff based on a “should have known” standard that is not authorized by General Municipal Law Section 812.

48. Under General Municipal Law Section 812(3)(c), the County Legislature was not authorized to do what it attempted to do – seeking to impose a different standard with respect to the “power to impose, or the imposition of, a penalty for failure to file, or for false filing, of any required annual financial disclosure statement.” In other words, the provisions of General Municipal Law

Section 812(6) are mandatory and are not subject to be omitted by election as is the case with respect to other provisions of Section 812 under Section 812(3).

49. Consequently, the attempt by the County Legislature to do so is without authority and is therefore null and void. The County Legislature attempted to do so by enacting Section 9 of the Local Law, which contains a constructive “should have known” standard. This was an unlawful departure from the provisions of General Municipal Law section 812. Although the County Legislature was permitted to require greater detail in the amount and type of financial disclosure required (Section 812(4)), it was not permitted to adopt a lower standard of culpability not provided for by the State Legislature (Section 812(3), and (6)).

50. Accordingly, Section 9 of the Local Law may not be enforced because it is *ultra vires*. As a result, this part of the Local Law should be declared null and void.

51. The Board also violated General Municipal Law Section 812(6) by failing to afford Plaintiff with an “adjudicatory proceeding” or “due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act.”

52. A copy of the Board’s Rules and Regulations is attached as **Exhibit I**.

53. The Board failed to abide by its own Rules and Regulations. Section 1.5 of the Board’s Rules and Regulations provides that the Rules and

Regulations “shall govern activities of the Board, provided such rules are consistent with the Ethics Code.”

54. Notably, the “Ethics Code” is not defined in the Rules and Regulations (Section 2.1(G)), which adds yet another fatal deficiency to the list of problems infecting the Board’s attempt to fine Plaintiff.

55. The Rules and Regulations defines “Violation” as “acts prohibited by the Ethics Code” (Section 2.1(O)). As noted above, however, the Rules and Regulations do not define “Ethics Code.” On this basis alone, the Fine should be vacated based on this failure of the Rules and Regulations to identify what constitutes a violation.

56. And even if the court or an attorney could conclude that the Rules and Regulations intended to (but did not) reference Local Law 10-1989, that does not suggest that County employees (even a Legislator) should be expected to guess as to what the Board meant when adopting its Rules and Regulations.

57. Moreover, Section 3 of the Rules and Regulations sets forth the Board’s powers. This list of powers, however, does not include the power to impose a fine. Notably, Section 3(L) authorizes the Board to “[a]ccept and consider complaints of violations of this chapter, and **offer recommendations with respect to remedies** for violation of that chapter.” (emphasis added). No provision of the Board’s own Rules and Regulations, however, permits it to impose fines.

58. Section 6 of the Rules and Regulations governs investigations. Section 6.1 provides that the “Board shall receive written complaints of alleged violations of the Ethics Code for the purpose of Investigation.”

59. Section 6.7 provides that a “request for Investigation shall be in writing and shall include:

- A. The full name and address of the person entering the request (provided that the person entering the request may ask the Board to keep this information confidential);
- B. The full name, address and telephone number (if known) of the person whose conduct is to be investigated; and
- C. A clear statement of the facts alleged to constitute the violation of the Ethics Code, including the date(s) and place(s) thereof; and the basis of the violation.

60. Upon information and belief, no written complaint or “request for investigation” was received by the Ethics Board. If such a request was received, it was not provided to Plaintiff.

61. Plaintiff never received a copy of any complaint or request for investigation with respect to the Form. Plaintiff’s only notice of the investigation was the Board Chair’s conversation with Plaintiff’s legislative assistant, Robert Matthews. Consequently, Plaintiff’s only notice of the complaint or the Board’s inquiry was a second-hand verbal communication.

62. Plaintiff is not aware that any Request for Investigation was docketed as required by Section 6.8 of the Rules and Regulations.

63. Section 6.11 required the Board Chair to provide Plaintiff with a copy of the “Ethics Code and these rules.” This was never done.

64. Plaintiff was never advised of his right to be represented by counsel as set forth in Section 6.12 of the Rules and Regulations.

65. Section 6.13 requires the investigation and the Board's consideration thereof to be conducted "confidentially." The Board's investigation and consideration, however, were not conducted confidentially and were reported in its publicly available minutes that were, upon information and belief, disclosed on the County's website. The Board's investigation of Plaintiff was thereafter re-published in the Buffalo News and other media as a result of the Board's failure to abide by its own Rules and Regulations:

66. Indeed, ethics investigations are presumably conducted in confidence to protect against tarnishing a person's reputation until an investigation has concluded. Such a measure is obviously designed to protect against premature and/or erroneous disclosures that can never be "un-rung."

67. No hearing was ever provided. Plaintiff was never interviewed or given the opportunity to appear before the Board. Nor was Plaintiff asked to identify witnesses.

68. Although Section 6.15 of the Rules and Regulations states that the scheduling of a hearing may be done at the Board's discretion, this provision violates the Due Process Clauses of the state and federal constitutions.

69. A hearing should have been scheduled. The Local Law (10-1989), Section 9, requires that the Board's rules "shall provide for due process procedural mechanisms substantially similar to those set forth in article three of

the state administrative procedure act but such mechanisms need not be identical in terms of scope.”

70. Section 301(1) of the State Administrative Procedure Act requires that, “[i]n an adjudicatory proceeding, all parties **shall be afforded an opportunity for hearing** within reasonable time.” (emphasis added). The imposition of a fine without a hearing is not “substantially similar” to the state statute. Indeed, a hearing is required (“shall”) and a local law cannot deviate from that core statutory or constitutional requirement, as the Legislature and the Board have done here. And to the extent that the County Legislature intended to make a hearing discretionary, it has no authority to deviate from state statutes, let alone constitutional requirements.

71. Plaintiff was never provided with a copy of an Investigation Report as required under Section 6.18(c)(3) of the Rules and Regulations.

72. Section 6.18(c) sets forth the actions that the Board may take if a violation is found, **none of which include the imposition of a fine.**

73. Although the Board gave Plaintiff an opportunity to request reconsideration, he was provided no notice of any appeal rights, as required under Section 9 of the Local Law (10-1989), which provides that the Board “shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of the civil penalties herein authorized.” Seeking reconsideration from the Board itself is not an appeal. The Board never made Plaintiff aware of any appeal process, nor does any such process appear to be established in the Board’s Rules and Regulations.

74. As noted in Plaintiff's letter dated February 29, 2016, the Local Law (10-1989), which provides the prescribed form for disclosure, states that liabilities reported are those existing "as of the date of filing of this statement." Plaintiff's disclosure complied with that requirement – the only requirement that the Board is authorized to impose.

75. And the Board was not authorized to deviate from the form set forth in the Local Law (19-1989), which provides in Section 4 in relevant part, that the financial disclosure form "shall" be filed before the 15th day of May each year "in the form set forth in section seven of this local law."

76. Section 8 of the Local Law, governing the annual financial disclosure statement, provides that "the following form of financial disclosure shall be annually filed by all persons required to file financial disclosure statement under this local law . . ." And the form that follows is not the form that the Board promulgated at any time relevant here.

77. The required form has a paragraph (19) that corresponds to paragraph 8 of the Form at issue. The language prescribed by the County Legislature in the Local Law provides in relevant part as follows: "List below all liabilities of the reporting individual and such individual's spouse, in excess of \$5,000 as of the date of filing of this statement, other than liabilities to a relative." (emphasis added).

78. As a result, the manner in which the Plaintiff responded to the question concerning liabilities complied with the Local Law. And to the extent

that the form published by the Board deviated from that prescribed in the Local Law, it was unauthorized and no penalty may be based upon it.

79. Upon information and belief, the Board has in recent years attempted to impose fines on individuals, but courts have rejected such efforts and/or dismissed such claims by the Board.

80. As set forth above, the Board lacks authority to fine Plaintiff and its fine is therefore illegal and void.

81. Upon information and belief, the Board was not comprised of impartial fact-finders.

82. Each of the actions and omissions alleged above were carried out by the Board pursuant to a policy, practice or procedure of the County.

83. The County of Erie is liable for the acts of the Board of Ethics, which is not an independently suable entity separate and apart from the County.

FIRST CAUSE OF ACTION

(Section 1983 -- state and federal Due Process Clauses)

84. Plaintiff repeats and realleges each and every allegation set forth above.

85. Under the Fourth and Fourteenth Amendments of the United States Constitution, "No person shall be . . . deprived of life, liberty, or property without due process of law."

86. The New York State Constitution (Art. I § 6) provides similar protection.

87. Defendants' acts and omissions deprived Plaintiff of his Due Process rights under the state and federal constitutions. Defendants violated Plaintiff's rights by, *inter alia*, seeking to impose an *ultra vires* fine, which is compounded by the failure to provide him notice and an opportunity to be heard, or a hearing. Defendants seek to impose a fine pursuant to a Local Law that exceeds the permissible scope of authority conferred by the State enabling statute. Defendants also applied an improper "should have known" standard that was not permitted under state law – and did so in a manner that was *de facto* improper by predicating the fine on a statement "to the extent that" Plaintiff "should have known" – which is not even a definitive finding that he "should have known." Finally, Defendants also failed to abide by their own Rules and Regulations in many respects.

88. By reason of the foregoing, Plaintiff has sustained damages including reputational injury, mental distress, embarrassment and humiliation, and legal expenses.

SECOND CAUSE OF ACTION
(Equal Protection)

89. Plaintiff repeats and realleges each and every allegation set forth above.

90. Upon information and belief, Defendants have treated similarly situated individuals differently based on political party affiliation and in retaliation for his protected speech. In other words, Defendants have sought to disproportionately (i.e., more aggressively) enforce an ambiguous “rule” (that is not in fact enforceable under state law) against Plaintiff based solely on his political affiliation and his speech as a Legislator.

91. By reason of the foregoing, plaintiff has sustained reputational injury, mental distress, embarrassment and humiliation, and legal expenses.

THIRD CAUSE OF ACTION
(First Amendment Retaliation)

92. Plaintiff repeats and realleges each and every allegation set forth above.

93. Upon information and belief, Defendants have treated similarly situated individuals differently based on political party affiliation and in retaliation for his protected speech. In other words, Defendants have sought to disproportionately (i.e., more aggressively) enforce an ambiguous “rule” (that is not in fact enforceable under state law) against Plaintiff based solely on his political affiliation and his speech as a Legislator.

94. By reason of the foregoing, plaintiff has sustained reputational injury, mental distress, embarrassment and humiliation, and legal expenses.

FOURTH CAUSE OF ACTION

(Defamation)

95. Plaintiff repeats and realleges each and every allegation set forth above.

96. Defendants' statements that Plaintiff acted improperly, unethically, or otherwise violated any rule or law concerning financial disclosure constitute defamation (libel and slander).

97. Said statements were false and made with actual malice and ill will toward Plaintiff for the purpose of injuring his good name and reputation and were intended to expose him to scorn, public ridicule and disgrace. Said statements were also intended to induce a negative opinion of Plaintiff in the minds of right-thinking persons.

98. By reason of the foregoing, plaintiff has sustained reputational injury, mental distress, embarrassment and humiliation, and legal expenses.

FIFTH CAUSE OF ACTION

(Negligence)

99. Plaintiff repeats and realleges each and every allegation set forth above.

100. Defendants failed to properly train or supervise the members of the Board of Ethics concerning, *inter alia*, County employees' financial disclosure obligations, the processes and procedures to be afforded persons

accused of violating said obligations, the need to maintain political neutrality while investigating complaints and enforcing purported violations of the Ethics Code, the need to abide by the Board's own Rules and Regulations, and the need to protect employees' state and federal civil rights during any investigation.

SIXTH CAUSE OF ACTION

(Declaratory Judgment)

101. Plaintiff repeats and realleges each and every allegation set forth above.

102. Plaintiff seeks a declaration that:

- a. his state and federal civil rights were violated by Defendants;
- b. Erie County Local Law 10-1989 is *ultra vires*, invalid, and unenforceable because it deviates from state law, including General Municipal Law Section 812;
- c. The Board failed to abide by its Rules and Regulations;
- d. The Board lacked the authority to impose the Fine; and
- e. Erie County Local Law 10-1989, and the Board's process and procedures, failed to comply with Section 301 of the State Administrative Procedures Act.

103. Plaintiff also seeks a declaration that the Fine is null and void, and thereby vacated.

WHEREFORE, Plaintiff demands judgment on all causes of action: against Defendants in an amount to be determined after trial; including possible punitive damages against Defendant Swartz; and for an Order declaring Erie County Local Law 10-1989 invalid, and vacating the Fine; together with the attorneys' fees, costs and disbursements incurred in prosecuting this action under 28 U.S.C. section 1988.

DATED: July 29, 2016

WEBSTER SZANYI LLP
Attorneys for Plaintiff
Ted Morton

By: /s/ Jeremy A. Colby
Jeremy A. Colby
1400 Liberty Building
Buffalo, New York 14202
(716) 842-2800
jcolby@websterszanyi.com



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

August 9, 2016

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

Dear Ms. McCarthy:

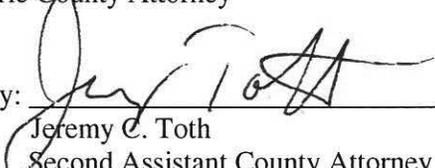
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Stocker, Kevin T. and William O'Hare v. NYS Board of Elections, County of Erie, et al.</i>
Document Received:	Order to Show Cause
Name of Claimant:	Kevin T. Stocker and William O'Hare
Claimant's attorney:	Kevin T. Stocker, Esq. 2645 Sheridan Drive Tonawanda, New York 14150

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Jeremy C. Toth
Second Assistant County Attorney
Jeremy.Toth@erie.gov

JCT/dld
Enc.

Comm. 17D-10
Page 49 of 59

DIANE Y. DEVLIN, J.S.C.

At a Special Term of the New York State Supreme Court in and for the County of Erie at Part 32 of the Courthouse, 50 Delaware Ave., Buffalo, NY, on the ___ day of ~~September~~ August, 2016.

PRESENT: _____

PAID
CHECK _____ CASH _____

AUG - 8 2016

ERIE COUNTY CLERK'S OFFICE

In the Matter of the Application of

KEVIN T. STOCKER
and
WILLIAM O'HARE

Petitioners,

ORDER TO SHOW CAUSE

Index No.: 16-00017

-against-

NEW YORK STATE BOARD OF ELECTIONS,
COUNTY OF ERIE (DEMOCRAT BOE
COMMISSIONER-LEONARD LENIHAN AND
REPUBLICAN BOE COMMISSIONER-RALPH MOHR)

FILED
ACTIONS & PROCEEDINGS

AUG 08 2016

ERIE COUNTY CLERK'S OFFICE

CHRISTOPHER JACOBS-REPUBLICAN AND
CONSERVATIVE CANDIDATE

ROSS KOSTECKY (REPUBLICAN STAFF MEMBER
OF THE ERIE COUNTY LEGISLATURE and
OBJECTOR TO SIGNATURES ON CONSERVATIVE
PETITION)

R E C E I V E D
AUG 09 2016

ERIE COUNTY DEPARTMENT OF LAW

RALPH LORIGO, Conservative Party Chairman

Respondents.

Upon the annexed verified petition of KEVIN T. STOCKER, ESQ., and WILLIAM O'OHARE dated August, 8, 2016, and all the pleadings and proceedings heretofore had herein, it is hereby

ORDERED that the RESPONDENTS show cause before this Court at Part 32 to be held at Part 32 of the Courthouse, 50 Delaware Ave., Buffalo, New York, on the 18th day of August, at 9:30 (a.m./pm) why an order should not be made and entered herein:

1. Reversing the NEW YORK STATE BOARD OF ELECTIONS-ERIE COUNTY's ruling invalidating signatures obtained on Conservative Opportunity to Ballot Petitions and

directing that a Conservative "Write-In" primary be held on September 13th, 2016 for NYS Senate-60th District.

2. Granting all such other, further, and/ or alternative relief as the Court deems just and proper.

Sufficient cause appearing therefore, leave is hereby granted to the Petitioner to submit upon the return day of this Order to Show Cause, and on any subsequent argument and hearing thereof, such additional affidavits, exhibits and other proof as may be necessary.

Sufficient cause appearing therefore, it is further

ORDERED that Respondent NEW YORK STATE BOARD OF ELECTIONS-ERIE COUNTY is directed to deliver, or cause to have delivered, for examination on the return date above the original Conservative Opportunity Ballot Petition and a certified copy thereof, and a certified copy of the general and specific objections, staff worksheets and notes and any and all other such documents in their custody, possession or legal control relating to the adjudication of this matter, including the most recent certified digital list of all the registered Conservative voters in the NYS Senate-60th District, and a certified copy of the signatures and registration card of any voter whose signature(s) were invalidated because it was hand printed or for any other reason.

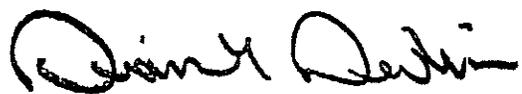
ORDERED that the NEW YORK STATE BOARD OF ELECTIONS-ERIE COUNTY shall produce Leonard Lenihan, Ralph Mohr and other witnesses capable of testifying as to the authenticity of the original Petition and capable of explaining in detail the meaning of the BOARD's staff worksheets and hearing officers rulings adopted by the BOARD.

ORDERED that good and sufficient service shall be had herein by service of a copy of this Order to Show Cause together with the verified Petition, in the following manner on or before August 11, 2016:

1. Upon the NEW YORK STATE BOARD OF ELECTIONS-ERIE COUNTY, in person or by express next day mail.
2. Upon CHRISTOPHER JACOBS by delivery to his house located at 42 Saybrook, Buffalo, New York on or before August 11, 2016.
3. Upon ROSS KOSTECKY by delivery to his house located at 406 Taunton, Buffalo, New York on or before August 11, 2016.
4. Upon RALPH LORIGO by delivery to his house located at 75 Rolling Woods, West Seneca, New York. *on or before 8/11/16*
5. Upon delivery to the NYS Attorney General's Buffalo Office on or before August 11, 2016.

DATED: Buffalo, New York
August 8, 2016

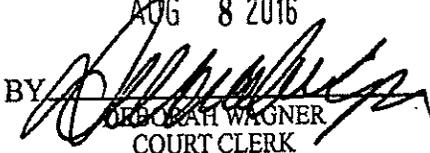
GRANTED



Hon. _____, JSC

DIANE Y. DEVLIN, J.S.C.

AUG 8 2016

BY 
DEBORAH WAGNER
COURT CLERK



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

August 11, 2016

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

Dear Ms. McCarthy:

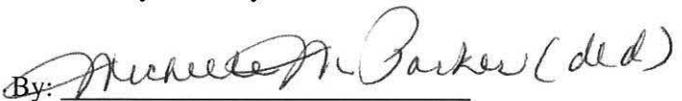
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Himelein, Larry v. Erie Community College</i>
Document Received:	Summons and Complaint
Name of Claimant:	Larry Himelein 40 West Hill Street Gowanda, New York 14070
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:  (dld)

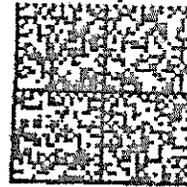
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

Lackawanna City Court
City Hall
714 Ridge Road
Lackawanna, NY 14218



7015 0640 0005 1242 2874



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\$06.460

08/05/2016

Mailed From 14218
US POSTAGE

RECEIVED
HUMAN RESOURCES

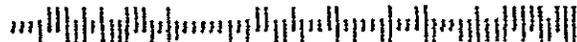
2016 AUG -9 AM 9:36

HR

Erie Community College
121 Ellicott Street
Buffalo, NY 14203

ELECTRONIC RETURN RECEIPT REQUESTED

14203\$2698 C031



A Guide to Small Claims Court is available at the Court addressed above



S York, County of Erie
I City Court Small Claim Part

Index No: SC /LA
30 PM

2016 AUG -9 AM 9:36
HUMAN RESOURCES

T Defendants:
Erie Community College, at 1



TAKE NOTICE that the following Claimant(s): Larry Himelein, at 40 West Hill Street, Gowanda, NY 14070 has/have asked judgment in this Court against you for \$2,000.00 together with costs upon the following claim(s): Monies Due for \$2,000.00 Additional detail (if any): Breach of contract. Daughter enrolled in winter class at ECC, drove out to withdraw in a blizzard, office closed, forced us to pay or would not provide transcript.

There will be a Hearing before the Court on this claim on: September 15, 2016 at 1:30 PM in the Small Claim Part, Room 1 at the Lackawanna City Court located at: City Hall, 714 Ridge Road, Lackawanna, NY 14218

You **MUST** appear and present your defense and any counterclaim you may desire to assert at the Hearing at the time and place above set forth (a corporation must be represented by an attorney or any authorized officer, director or employee). **IF YOU DO NOT APPEAR IN PERSON OR BY AN ATTORNEY, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT EVEN THOUGH YOU MAY HAVE A VALID DEFENSE.** If your defense or counterclaim, if any, is supported by witnesses, account books, receipts or other documents, you must produce them at the Hearing. The Clerk, if requested, will issue subpoenas for witnesses, without charge. However, there may be a fee to serve the subpoena.

NOTE: If you desire a jury trial, you must, before the day upon which you have been notified to appear, file with the Clerk of the Court a written demand for a trial by jury. You must also pay to the Clerk a jury fee of \$70 and file an undertaking in the sum of \$50 or deposit such sum in cash to secure the payment of any costs that may be awarded against you. You will also be required to make an affidavit specifying the issues of fact which you desire to have tried by a jury and stating that such trial is desired and demanded in good faith. Under the law, the Court may award up to \$25, as additional costs to the Claimant if a jury trial is demanded by you and a decision is rendered against you.

If you wish to present a counterclaim against the Claimant, you must do so by filing with the Clerk of the Court a statement containing such counterclaim within five days of receiving this Notice of Claim. At the time of such filing you must pay the Clerk a filing fee of \$5 plus the cost of postage to send your counterclaim by first class mail to the Claimant. If you fail to file a counterclaim within this five day period, you retain the right to file the counterclaim until the time of the Hearing, but the Claimant may request and obtain an adjournment of the Hearing to a later date.

If you admit the claim, but desire time to pay, you must appear personally on the day set for the Hearing and state to the Court your reasons for

Comm 47D-10
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Dated: 08/05/2016

Lisa Gauthier
Deputy Chief Clerk



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

August 11, 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>Adam, Angela v. ECWA and County of Erie</i>
Document Received:	Order to Show Cause
Name of Claimant:	Angela Adam 74 Aurora Avenue West Seneca, New York 14224
Claimant's attorney:	Denis J. Bastible, Esq. Cellino & Barnes, P.C. 350 Main Street 2500 Main Place Tower Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle M. Parker (dld)*

Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

Comm. 17D-10

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

ANGELA ADAM,

Claimant,

v.

ERIE COUNTY WATER AUTHORITY,
COUNTY OF ERIE,

Respondent,

This paper received at
Erie County Clerk's Office
on the 3rd July 2016
at 3:30 p.m.
by [Signature]
Deputy Clerk

NOTICE OF CLAIM

Index No.

PLEASE TAKE NOTICE, that the above named claimant claims and demands from the respondents, ERIE COUNTY WATER AUTHORITY and COUNTY OF ERIE, recompense for personal injuries and damages sustained by claimant by reason of the wrongful, negligent and careless acts and omissions of the respondents, their agents, servants and/or employees, and in support there of, the claimant states:

1. Claimant's address is 74 Aurora Avenue, West Seneca, NY 14224.
2. The claimant is represented by Cellino & Barnes, P.C. with offices located at 2500 Main Place Tower, 350 Main Street Buffalo, New York 14202, telephone (716) 888-8888. The incident in which personal injuries were sustained by the claimant occurred on or about June 21, 2016 at approximately 4:12 p.m.
3. The ERIE COUNTY WATER AUTHORITY and COUNTY OF ERIE

had contracted with a private contractor to have water pipe repair/replacement/installation work performed along the south side of Walden Avenue in the Town of Cheektowaga on or before June 21, 2016.

4. The ERIE COUNTY WATER AUTHORITY and COUNTY OF ERIE and/or the private contractor had the right eastbound travel lane blocked off with heavy construction equipment and trucks such that traffic exiting from 2345 Walden Avenue on June 21, 2016 had vision of eastbound traffic obscured.

5. The ERIE COUNTY WATER AUTHORITY and COUNTY OF ERIE and/or the private contractor created a dangerous and defective condition and failed to place flag people to direct traffic through a dangerous construction area.

6. As a result of the negligence of the ERIE COUNTY WATER AUTHORITY and COUNTY OF ERIE and/or the private contractor claimant ANGELA ADAM was involved in an automobile collision while exiting 2345 Walden Avenue on June 21, 2016 at approximately 4:12 p.m. due to the dangerous and defective condition which the ERIE COUNTY WATER AUTHORITY and COUNTY OF ERIE created and/or had constructive and actual knowledge of.

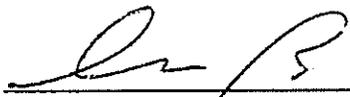
7. As a result of the collision, claimant sustained personal injuries which include cervical and lumbar spine strains and sprains. The full extent of claimant's injuries is not currently known at this time. Upon information and belief, claimant will be obligated to incur further medical expenses including drugs, medicines and prosthetic devices, the amount of which cannot be reasonably calculated at this time.

TAKE NOTICE that claimant demands payment of his claim as set forth
above.

DATED: Buffalo, New York
July 19, 2016

Yours, etc.,

CELLINO & BARNES, P.C.

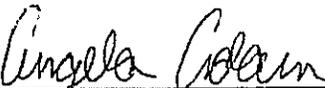
By: 

Denis J. Bastible, Esq.
Attorneys for Plaintiff
2500 Main Place Tower
350 Main Street
Buffalo, NY 14202-3725
(716) 888-8888

VERIFICATION

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

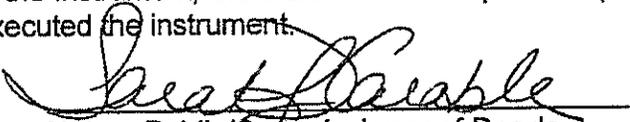
Angela Adam, being duly sworn, deposes and says that she is the plaintiff in the within action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes them to be true.



Angela Adam

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

On the 19th day of July, in the year 2016 before me, the undersigned, personally appeared Angela Adam, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in her capacity and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public/Commissioner of Deeds

SARAH J GRABLE
NOTARY PUBLIC STATE OF NEW YORK
ERIE
LIC. #01GR0338242
COMM. EXP. 03/07/2020