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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH.
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

MEMORANDUM

TO: Karen McCarthy, Clerk, Erie County Legislature

FROM: Michelle M. Parker, First Assistant County Attorney

DATE: July 28, 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 11 new claims brought against the County of Erie. The claims are as follows:

Claim Name

Ralph Bevilacqua, III v. County of Erie
Richard Bausao v. County of Erie
Patricia Leair v. County of Erie, et al.
James Harmon v. County of Erie
Tabitha Trautwein v. County of Erie
M&B Flix LLC v. County of Erie, et al.
Alesia Stevenson v. County of Erie, et al.
Lynn Bartoszewicz v. County of Erie
Damone Savage v. County of Erie, et al.
Estate of India Cummings v. County of Erie, et al.
Natalie A. Schaffer v. Erie County Board of Elections

MMP:dld
Attachments

95 FRANKLIN STREET – ROOM 1634, BUFFALO, NEW YORK 14202– PHONE (716) 858-2200 – FAX (716) 858-2281 (NOT FOR SERVICE)
WWW.ERIE.GOV

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 6, 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:	*Bevilacqua, Ralph III v. County of Erie*
Document Received:	NYS Division of Human Rights Charge of Discrimination Complaint
Name of Claimant:	Ralph J. Bevilacqua, III 23 Kennedy Drive Lackawanna, New York 14218
Claimant's attorney:	Rafael O. Gomez, Esq. Gomez & Becker, LLP 2746 Delaware Avenue The Eberhardt Mansion Buffalo, New York 14217

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.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of

RALPH J. BEVILACQUA, III,

Complainant,

v.

COUNTY OF ERIE,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law, Article 15

Case No.
10182067

Federal Charge No. 16GB603082

I, Ralph J. Bevilacqua, III, residing at 23 Kennedy Dr., Lackawanna, NY, 14218, charge the above named respondent, whose address is 95 Franklin St., Rm. 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 sex, opposed discrimination/retaliation.

Date most recent or continuing discrimination took place is 9/29/2015.

See attached complaint.

New York State Division of Human Rights
Complaint Form

RECEIVED
JUN 13 2016
NYSDHR BUFFALO
REGIONAL OFFICE

CONTACT INFORMATION

My contact information:

Name: RALPH J. BEVILACQUA, III

Address: 23 Kennedy Drive Apt or Floor #:

City: Lackawanna State: NY Zip: 14218

REGULATED AREAS

I believe I was discriminated against in the area of:

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

I am filing a complaint against:

Company or Other Name: County of Erie

Address: 95 Franklin Street

City: Buffalo State: NY Zip: 14202

Telephone Number: 716 (area code) 858 8300

Individual people who discriminated against me:

Name: Mary Thomas Scott
Title: Labor Relations Atty

Name: Steve Miller
Title: Director of Labor Rel.

DATE OF DISCRIMINATION

The most recent act of discrimination happened on: 9 (month) 29 (day) 2015 (year)

BASIS OF DISCRIMINATION

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

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

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

I believe I was discriminated against because of my:

☐ **Age** *(Does not apply to Public Accommodations)* Date of Birth:	☐ **Genetic Predisposition** *(Employment only)* Please specify:
☐ **Arrest Record** *(Only for Employment, Licensing, and Credit)* Please specify:	☐ **Marital Status** Please specify:
☐ **Conviction Record** *(Employment and Credit only)* Please specify:	☐ **Military Status:** Please specify:
☐ **Creed / Religion** Please specify:	☐ **National Origin** Please specify:
☐ **Disability** Please specify:	☐ **Race/Color or Ethnicity** Please specify:
☐ **Domestic Violence Victim Status:** *(Employment only)* Please specify:	☑ **Sex** Please specify: ☐ **Female** ☑ **Male** ☐ **Pregnancy** ☐ **Sexual Harassment**
☐ **Familial Status** *(Housing and Credit only)* Please specify:	☐ **Sexual Orientation** Please specify:
☑ **Retaliation** *(if you filed a discrimination case before, or helped someone else with a discrimination case, or reported discrimination due to race, sex, or any other category listed above)* Please specify: Testifying in Phillip Tricoli discrimination case	

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 DISCRIMINATION

Please answer the questions on this page only if you were discriminated against in the area of employment. 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: (9 Month 29 day 2015 year) What was your job title? MEO

☐ **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: conducted a strip search during disciplinary investigation

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

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

PLEASE SEE ATTACHED VERIFIED COMPLAINT

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

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

RALPH J. BEVILACQUA, III,

Complainant,

VERIFIED COMPLAINT

vs.

COUNTY OF ERIE

Respondent.

Complainant, RALPH J. BEVILACQUA, III, by and through his attorneys at Gomez & Becker, LLP, hereby submits this Verified Complaint against Respondent, COUNTY OF ERIE, upon information and belief, and at all times hereinafter mentioned, stating that:

1. Complainant, RALPH J. BEVILACQUA, III (hereinafter referred to as "Mr. Bevilacqua") alleges he has been subjected to discriminatory conduct and disparate treatment in the course of his employment with Respondent, COUNTY OF ERIE (hereinafter referred to as "the County") based on his sex.

2. Mr. Bevilacqua began his permanent employment with the County in 1994. In 2015, he worked in the Highway Department and his title was Motor Equipment Operator.

3. Mr. Bevilacqua has been subjected to discriminatory conduct and disparate treatment due to his sex.

4. In early 2015, Mr. Bevilacqua filed an Improper Practice Charge against the County of Erie as a result of being denied several promotions despite being qualified and senior to the employees awarded the positions.

5. As part of the Improper Practice Charge it was alleged that the County was retaliating against Mr. Bevilacqua for having provided information against Gary Zawodzinski, a

former member of management for the County, and also testifying against the County in a discrimination lawsuit filed by Phillip Tricoli.

6. In and around June of 2015, the County began an investigation into Mr. Bevilacqua for alleged violations of workplace rules. This investigation is believed to have been in retaliation for Mr. Bevilacqua's prior issues regarding Mr. Zawodzinski, and a pending investigation by the New York State Attorney General's Office. The investigation led to several Disciplinary Hearings between the County and Mr. Bevilacqua and his Union representation.

7. Mr. Bevilacqua was ultimately terminated on September 29, 2015, as a result of the findings from the County's investigation. A grievance was filed regarding this termination and the matter is currently in Arbitration.

8. Prior to Mr. Bevilacqua's termination there was a Disciplinary Hearing at the request of the County sometime between June 15, 2015 and July 14, 2015. During this meeting the County was primarily represented by Mary Thomas Scott, Esq. Ms. Scott had been the person doing most of the questioning of Mr. Bevilacqua in the prior Hearings as well. The questioning of Mr. Bevilacqua leading up to this meeting had been focused on whether or not he had spoken to the New York State Attorney General's Office regarding William Geary and an allegation pertaining to a personal generator being serviced and filled with gas in violation of the County rules and policies.

9. During the meeting, sometime between June 15, 2015 and July 14, 2015, Mr. Bevilacqua was taken into a room with Ms. Scott, other members of management of the County, including the Commissioner of the Department of Labor Relations, Steven Miller, and Union representation, including the Union President, Richard Canazzi. She asked him if he was recording the conversation and he denied that he was doing so. Prior to Mr. Bevilacqua being

allowed to speak he was ordered by Ms. Scott to stand up and lift up his shirt and to turn around. He pulled up his shirt and exposed his bare stomach and chest and spun around as ordered. Ms. Scott ordered him to unbuckle his pants and roll it down just above exposing his genital area. Mr. Bevilacqua complied again. No one from the County stopped Ms. Scott from forcing him to expose his nude body as she had ordered.

10. Mr. Bevilacqua was humiliated, embarrassed and fearful of losing his job so he complied with the orders given by Ms. Scott.

11. Mr. Bevilacqua was forced to expose himself to Ms. Scott and others because he is a male, and the County has never requested or ordered any female employee to expose herself in this manner as part of a disciplinary hearing or investigation into violations of workplace rules or policies.

12. Mr. Bevilacqua has been treated differently than females in the workplace because he is a male.

13. The County and Ms. Scott investigated and terminated Mr. Bevilacqua in a biased and one-sided investigation, without obtaining any substantiation of the allegations, and solely because he is a male.

14. The County investigation of female employees involves due diligence and fairness in reviewing the allegations, and all of the relevant and material information is obtained before reaching a decision.

15. Mr. Bevilacqua was denied a fair investigation because he is male and the County did not conduct due diligence, nor a fair investigation, into the allegations against him.

16. The County also falsified witness accounts of the issues raised in the investigation

in a biased attempt to cover-up Ms. Scott's discriminatory conduct and disparate treatment of Mr. Bevilacqua.

17. For example, one of the reasons given for Mr. Bevilacqua's termination is that he allegedly claimed Bill Geary stole gas and spark plugs from the County. He denies ever stating this to anyone, and had told Ms. Scott and the County that he had been ordered to pick up a personal generator from Mr. Geary's house because it was not working and he was out of town. He complied with the order and was asked to inspect the generator and get it back up and running and return it Mr. Geary's house. Mr. Bevilacqua claimed that Mr. Geary was guilty of theft of County services because his personal property was being serviced by County workers, and on County time.

18. In another example, the County also gave as a reason for the termination that Mr. Bevilacqua, on June 10, 2015, handed a cup of urine to Don Hoag and stated "This is what I think of you." The County was in possession of a statement from Don Hoag wherein he states "Today while running the machine he [Mr. Bevilacqua] handed me a cup of urine in front of my foreman Joe." There was no mention in this statement about any accompanying words by Mr. Bevilacqua.

19. Mr. Hoag testified in the Arbitration on April 27, 2015, regarding the allegations against Mr. Bevilacqua. He stated that no one from the County ever spoke to him about the statement he made regarding Mr. Bevilacqua, and this was his only involvement with the County investigation. He was never questioned by Ms. Scott. When Mr. Hoag was questioned about the allegation about being handed urine he admitted he did not know it was urine. In fact, the only reason he thought it was urine was because it was warm. He admitted that, after receiving a drink from Mr. Bevilacqua, he said "It's probably piss warm." In response, Mr. Bevilacqua

said to him "What do you expect, it's been sitting in the truck for three hours."

20. The County fabricated the alleged statement by Mr. Bevilacqua to Mr. Hoag after he handed him a drink. The County never questioned Mr. Hoag about his statement, and added the inflammatory comment by Mr. Bevilacqua as part of the decision to terminate him. The County never asked Mr. Bevilacqua about any of the allegations involving Mr. Hoag and used as part of the basis for termination.

21. Mr. Bevilacqua was singled out because he is a male, was subjected to exposing his nude body parts, and was treated vastly different than any other female employee of the County, resulting in a violation of his civil rights.

22. Based upon all of the foregoing, Respondent must be held liable for the unlawful discriminatory practices and disparate treatment resulting in Mr. Bevilacqua being treated differently than females in the workplace and terminated, all in violation of Title VII of the Civil Rights Act of 1964 and the New York State Human Rights Law (Executive Law, Article 15), §296.

23. This Verified Complaint is respectfully submitted to the United States Equal Employment Opportunity Commission and the New York State Division of Human Rights to investigate and charge Respondent for the aforementioned unlawful discriminatory practices.

24. Mr. Bevilacqua has not commenced any other civil action at this time regarding the violation of his civil rights. He does have a pending Arbitration regarding his termination being in violation of the Collective Bargaining Agreement with the County.

Dated: June 13, 2016
Buffalo, New York

RAFAEL O. GOMEZ, ESQ.
Gómez & Becker, LLP
Attorneys for Complainant
2746 Delaware Avenue
The Eberhardt Mansion
Buffalo, New York 14217
(716) 873-0333
rgomez@gomezbecker.com

VERIFICATION

I, RALPH J. BEVILACQUA, III, being duly sworn, deposes and says that I am the Complainant in the instant action and have read the foregoing Verified Complaint and know the contents thereof; and that same is true to the best of my knowledge, except as to those matters that are stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

RALPH J. BEVILACQUA, III

Subscriber and sworn to before me
on this 13th day of June, 2016.

Notary Public

RAFAEL OMAR GOMEZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 2/4/2018

NOTARIZATION OF THE COMPLAINT

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

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

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

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

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

Sign your full legal name

Subscribed and sworn before me
This 13th day of June, 2016

Signature of Notary Public

County: Commission expires:

RAFAEL OMAR GOMEZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 2/4/20 18

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

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 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:	*Bausao, Richard v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Richard Bausano Pro Se - DIN #13-B-2431 Groveland Correctional Facility PO Box 50 Sonyea, New York 14556-0050
Claimant's attorney:	Claimant is proceeding *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP:dld
Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

RICHARD BAUSANO,

Claimant,

-against-

NOTICE OF INTENT TO FILE A CLAIM

THE COUNTY OF ERIE,

Defendant.

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

The post office address of the Claimant is: #13-B-2431, Groveland Correctional Facility, P.O. Box 50, Sonyea, New York 14556-0050.

The Claimant is submitting this Notice of Intent to File a Claim **Pro Se**. The Nature of the Claim is as Follows:

I had my first operation for my Back on May 14, 2015, at ECMC. After my 2nd operation on December 3, 2015, Dr. Bennett told me on December 4, 2015 that I had Mersa. On December 6, 2015 I had new hardware put in my back and the Mersa cleaned out, then a few days later they went back into my Back to clean out the Mersa again. I had to do this Two more times the last time was on January 11, 2016 at ECMC. On January 15, 2016 I was sent back to Groveland Correctional Facility. On April 12, 2016 they took a sample culture and I found out that the Mersa came back again this was on April 14, 2016. I did not receive antibiotics until 3 weeks after I found out the Mersa was back. This has caused me much pain, suffering, and anguish, due to the nerve damaged caused by the Mersa.

RICHARD BAUSANO **Pro Se**

AFFIDAVIT OF SERVICE

STATE OF NEW YORK
COUNTY OF ERIE

I, Richard Bausano, being duly sworn, deposes and says:

That on the 14th day of June, 2016, I served a true and exact copy of the within:

NOTICE OF INTENT TO FILE A CLAIM, by depositing the same, endorsed in a postpaid properly addressed envelope, in the official depository at Groveland Correctional Facility under the exclusive care and custody of the New York State Department of Correctional Services, addressed and sent to the following individuals at the addresses designated by them:

County Attorney for Erie County
Michael A. Siragusa
95 Franklin Street
Baffalo, New York 14202

ONE COPY CERTIFIED MAIL RETURN RECEIPT REQUESTED

Richard Bausano 13B2431
Claimant, **Pro Se**
Groveland Correctional
P.O. Box 50
Sonyea, New York 14556-0050

Sworn to before me this

17 day of June, 2016.

NOTARY PUBLIC STATE OF NEW YORK

J. EDWARD BROWN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BR6324801
Qualified in Erie County
My Commission Expires May 11, 2019

VERIFICATION

State of New York)
County of Livingston) ss.:

RICHARD BAUSANO (#13-B-2431), being duly sworn, deposes and says that, I am the Claimant named in the foregoing Notice of Intention to File a Claim against The County of Erie; I have read said document and know its contents; the same is true to my own knowledge, except as to those matters stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

RICHARD BAUSANO #13-B-2431
Claimant, Pro Se
Groveland Correctional Facility
7000 Sonyea Rd., P.O. Box 50
Sonyea, New York 14556-0050

Sworn to before me this 17
day of June, 2016.

NOTARY PUBLIC

J. EDWARD BROWN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BR6324801
Qualified In Erie County
My Commission Expires May 11, 2019

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 15, 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:	*Leair, Patricia v. Town of Cheektowaga and County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Patricia Leair 100 Moorman Drive, Apt. 22 Buffalo, New York 14225
Claimant's attorney:	Anthony J. Tantillo, Esq. William Mattar, P.C. 6720 Main Street, Suite 100 Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP:dld
Enc.

This paper received at the
Erie County Attorney's Office
from Monique Gersing
the 12 day of July, 2016
at 3:38 a.m./p.m.
Assistant County Attorney

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

IN THE MATTER OF THE CLAIM OF:

PATRICIA LEAIR

Claimant

-against-

NOTICE OF CLAIM

TOWN OF CHEEKTOWAGA
3301 Broadway
Cheektowaga, New York 14227

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

Respondents

PLEASE TAKE NOTICE that **PATRICIA LEAIR** hereby makes claim against the **TOWN OF CHEEKTOWAGA** and the **COUNTY OF ERIE**, and in support thereof alleges:

1. That the undersigned, **PATRICIA LEAIR**, residing at 100 Moorman Drive, Apt. 22, Buffalo, New York 14225, by and through her attorneys, **WILLIAM K. MATTAR, P.C.**, 6720 Main Street, Suite 100, Williamsville, New York 14221, claims damages against the **TOWN OF CHEEKTOWAGA** and/or the **COUNTY OF ERIE**, for personal injuries, pain and suffering, change of lifestyle, loss of enjoyment of life, general and special damages, medical expenses, and property damages and all other damages allowed by law resulting from the serious injuries suffered by Claimant, **PATRICIA LEAIR**.

2. That the said injuries were sustained by **PATRICIA LEAIR** on May 30, 2016 at 78 Crandon Boulevard in the Town of Cheektowaga, County of Erie and State of New York, when she was caused to fall due to the existence of a dangerous condition while lawfully walking on the sidewalk and curb of the aforesaid property. Said sidewalk and curb is owned, inspected, controlled and maintained by **TOWN OF CHEEKTOWAGA** and/or the **COUNTY OF ERIE**, their servants, agents and/or employees.

3. That the Claimant's damages and injuries occurred as a result of the negligence, carelessness, and reckless disregard for the safety of the public by the **TOWN OF CHEEKTOWAGA** and/or the **COUNTY OF ERIE**, their servants, agents or employees in failing to maintain the property, sidewalks and curbs in a reasonable and safe condition, failing to provide a

even unbroken surface in an area traveled by pedestrians, failure to inspect, repair, maintain the property and its sidewalks and curbs, and putting the sidewalks and curbs to special use and other acts of negligence, carelessness and recklessness to prevent the happening of this accident.

4. That as a result of the foregoing, the Claimant, **PATRICIA LEAIR**, sustained very serious injuries, including a fractured nose, fractured ribs, lacerations and bruising. Some of these injuries will be of a permanent or indefinite duration, and Claimant, **PATRICIA LEAIR,** was and will, in the future be forced to expend sums of money for hospitals, doctors and other medical expenses.

5. That the said injuries were occasioned solely and wholly as a result of the negligence, carelessness and recklessness of the **TOWN OF CHEEKTOWAGA** and/or the **COUNTY OF ERIE** and through their agents, servants and employees and without any negligence on the part of the Claimant contributing thereto.

DATED: Williamsville, New York
June 22, 2016

Anthony J. Tantillo, Esq.
WILLIAM K. MATTAR, P.C.
Attorney for Claimant
6720 Main Street, Suite 100
Williamsville, New York 14221-5986
(716) 633-3535

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

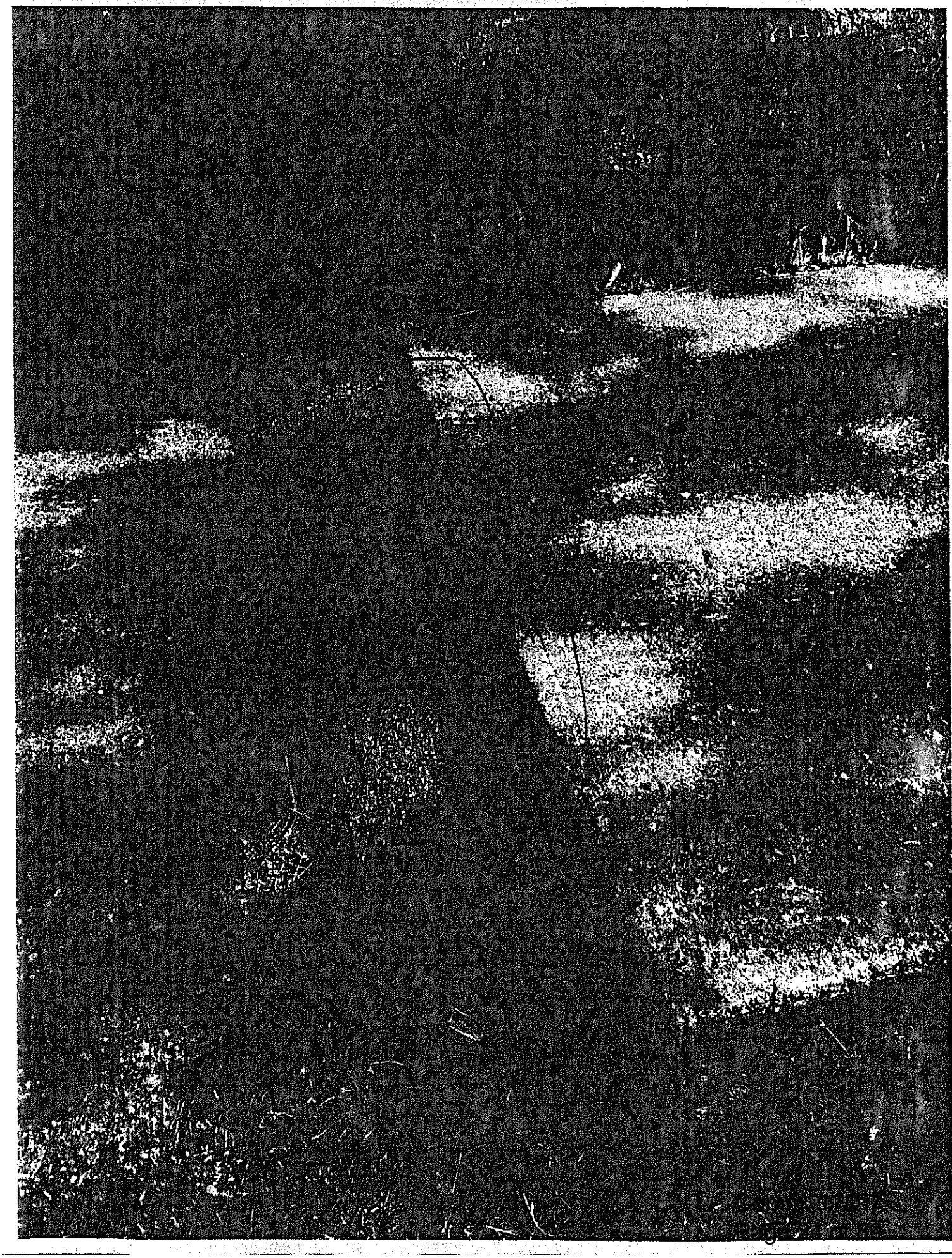
PATRICIA LEAIR, being duly sworn, deposes and says that she is a Claimant in this action; that he has read the foregoing Notice of Claim and know the contents thereof; that the same is true to the knowledge of the deponent, except as matters therein stated alleged on information and belief, and that as to those matters she believes them to be true.

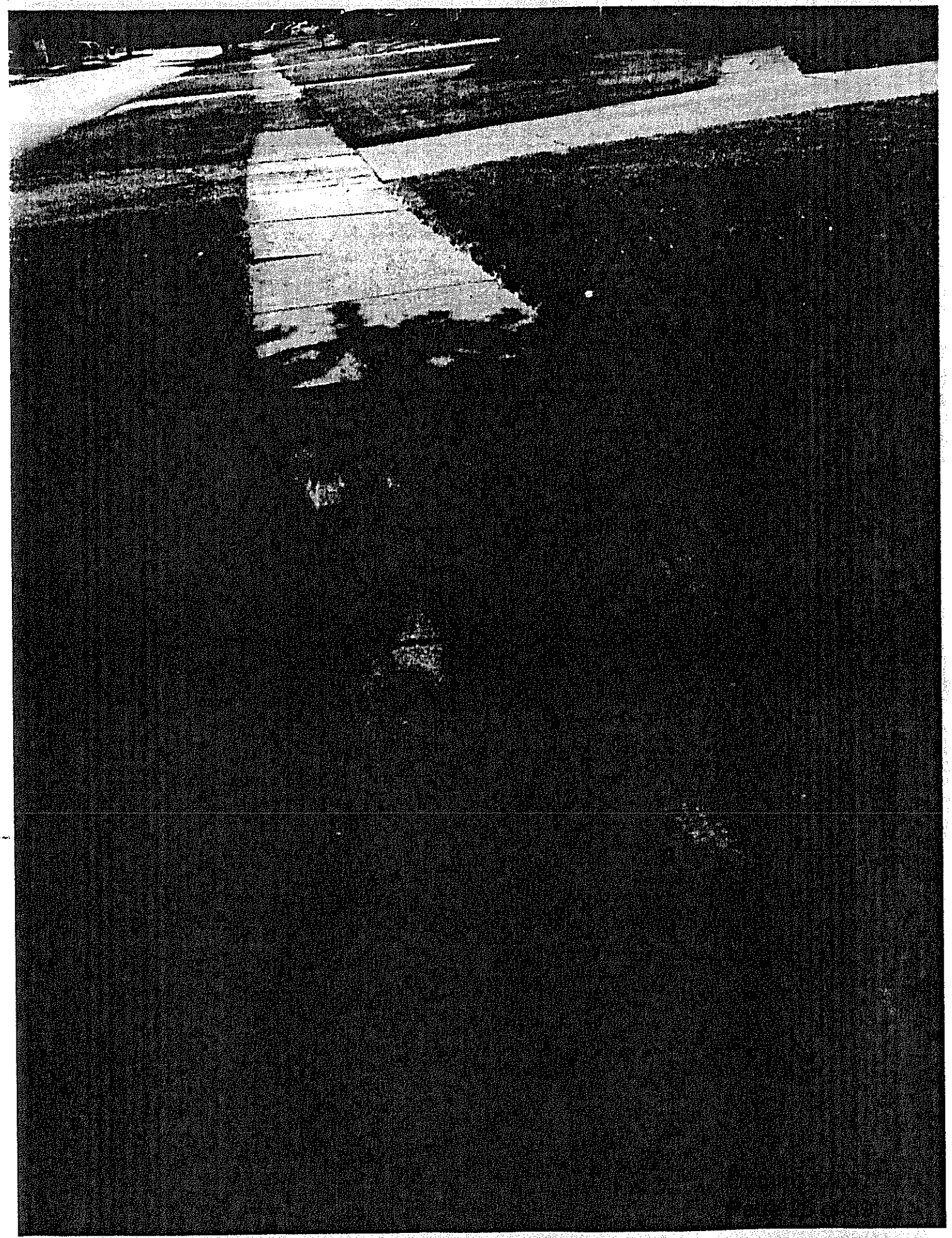
Patricia Leair
PATRICIA LEAIR

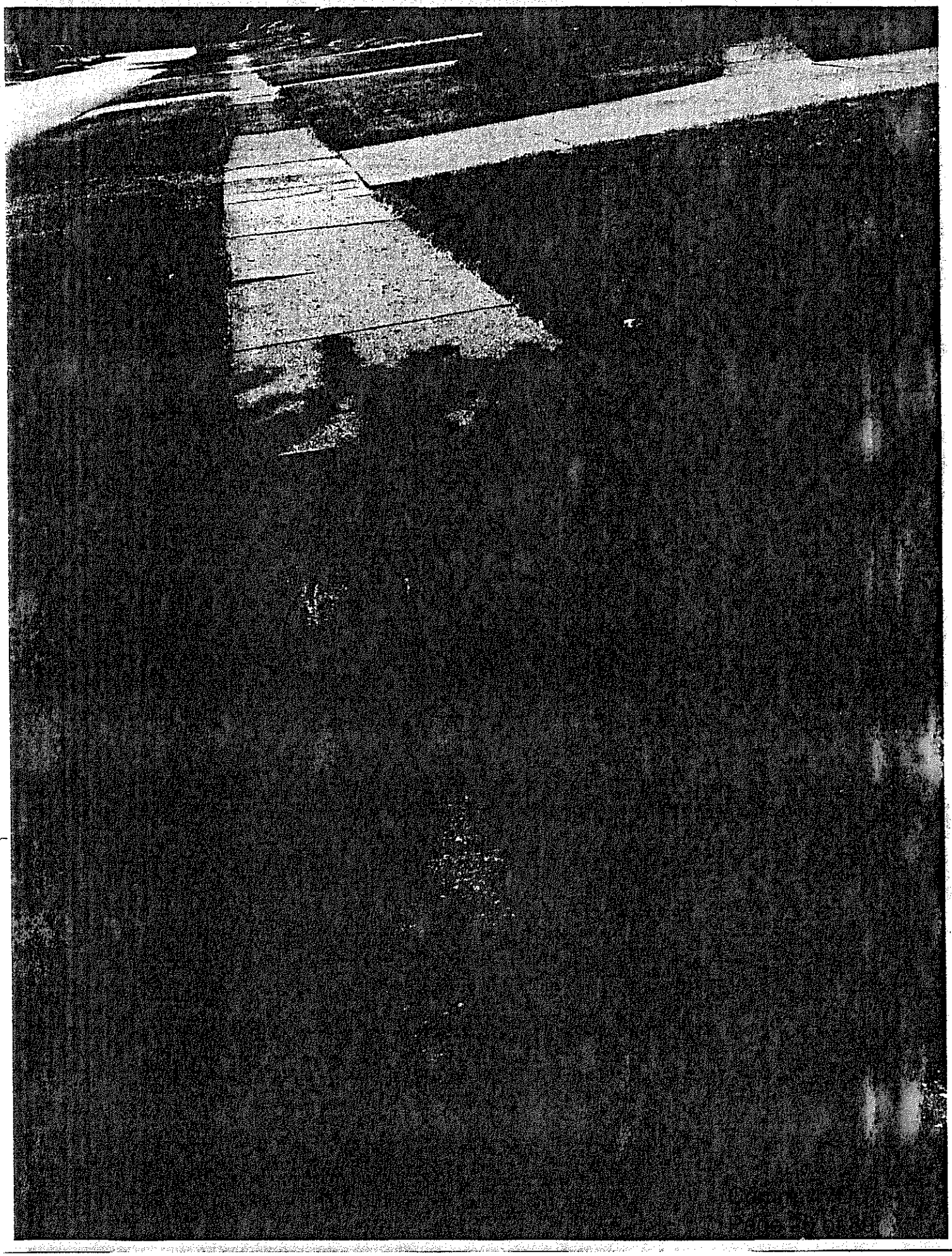
Sworn to before me this
28 day of June, 2016.

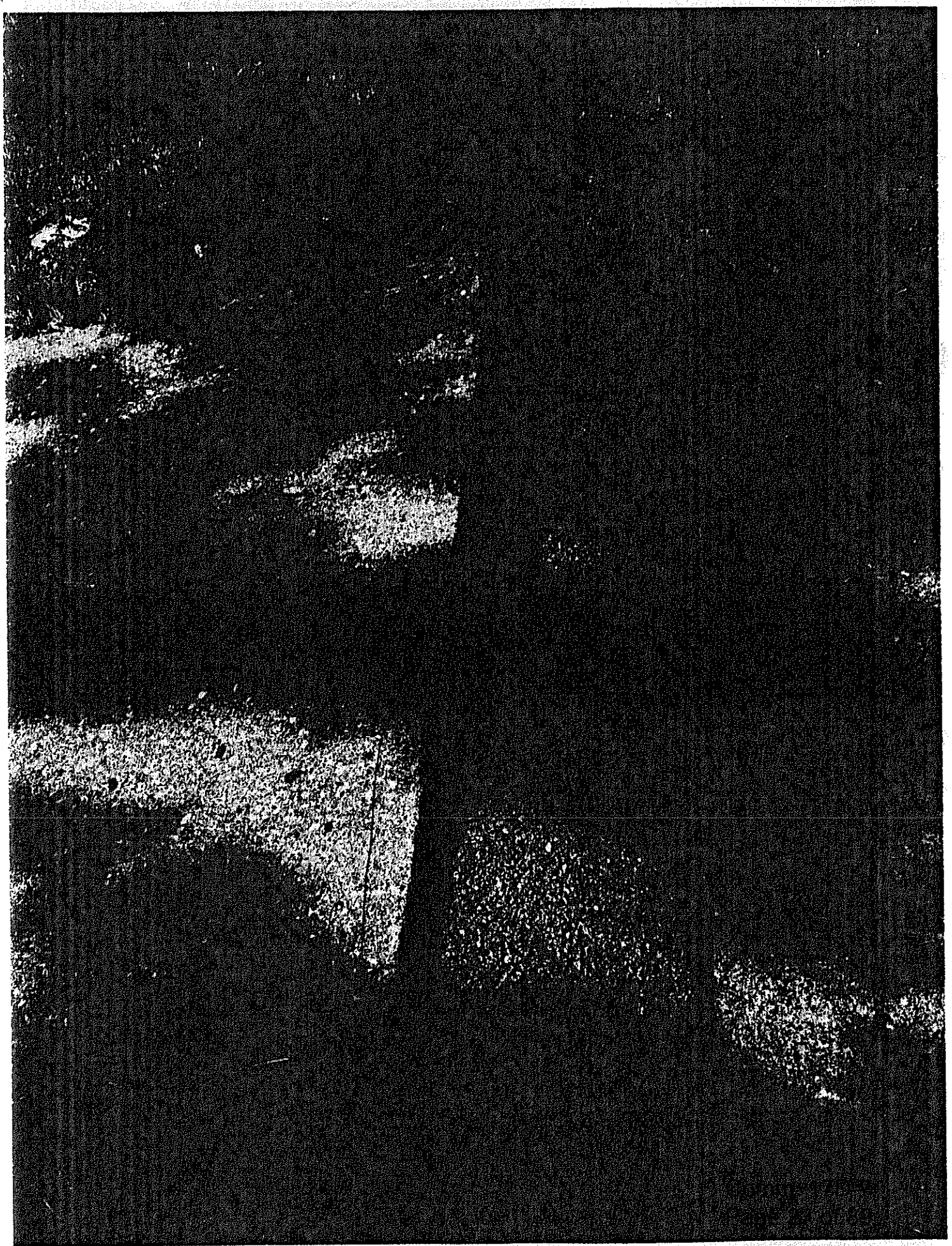
Melissa A Sparks AKA Melissa A Tomczak
Notary Public

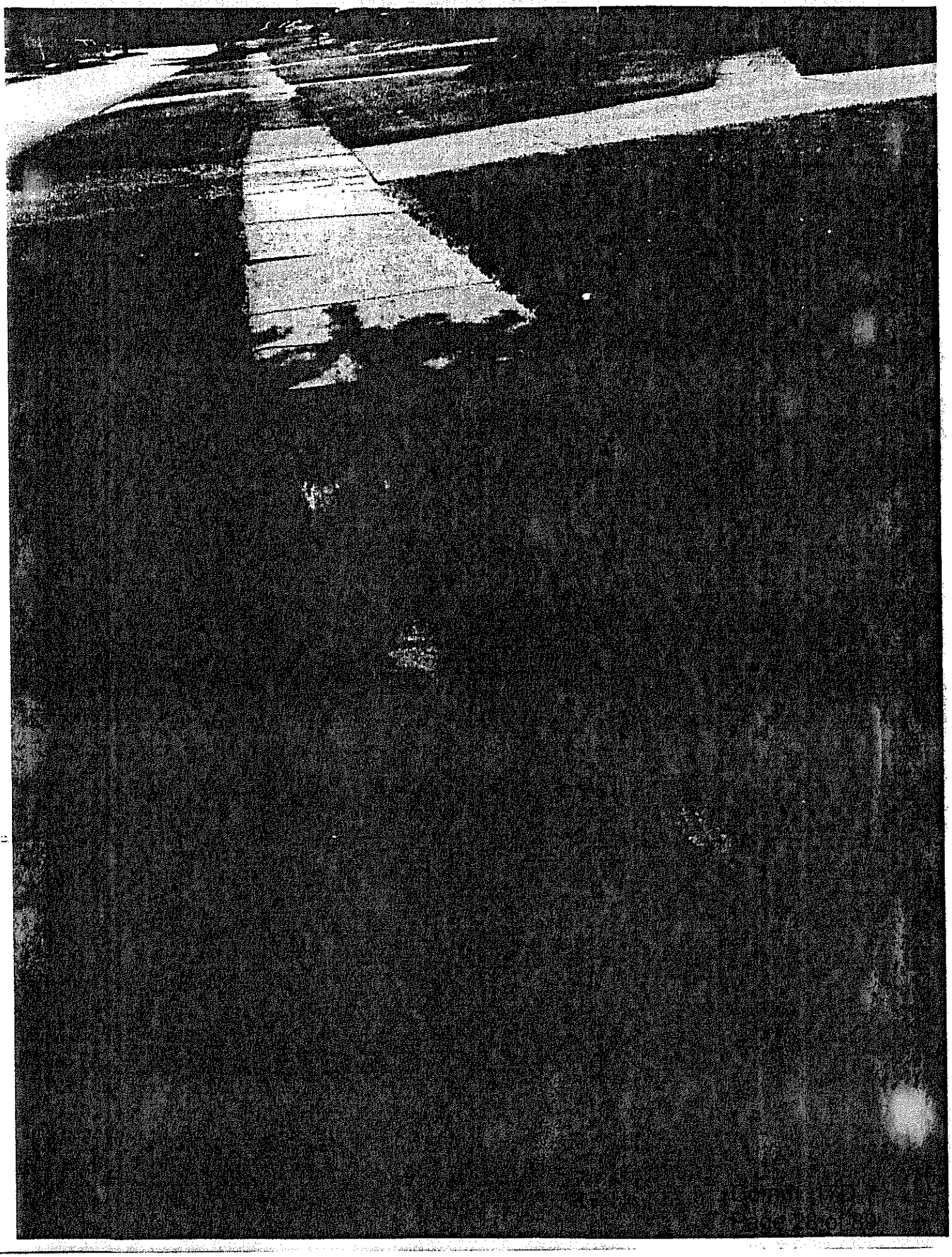
Melissa A. Sparks
01SP6312390
Notary Public, State of New York
Qualified in Erie County
My commission expires SEPTEMBER 29th, 2018











MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 15, 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:	*Harmon, James v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	James Harmon 56 Whitney Place Buffalo, New York 14201
Claimant's attorney:	Andrew P. Fleming, Esq. Chiacchia & Fleming, LLP 5113 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 Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

NEW YORK STATE SUPREME COURT
COUNTY OF ERIE

JAMES HARMON

Claimant,

-against-

COUNTY OF ERIE

Respondent.

NOTICE OF CLAIM

This paper received at the Erie County Attorney's Office from Andrew Fleming on the 11 day of May, 2016 at 11:02 a.m./p.m.

Assistant County Attorney

TO: COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

PLEASE TAKE NOTICE, that JAMES HARMON has a claim against the COUNTY OF ERIE for damages incurred due to Respondent's unlawful conduct, as outlined herein, that he has and continues to suffer while employed by the COUNTY OF ERIE.

1. The claimant is JAMES HARMON, whose post office address is 56 Whitney Place, Buffalo, New York 14201.

2. The name of the attorney for the claimant is CHIACCHIA & FLEMING, LLP, Andrew P. Fleming, Esq., of counsel, whose post office address is 5113 South Park Avenue, Hamburg, New York, 14075, telephone number (716) 648-3030.

3. The Claimant will be claiming that the Respondent violated and continues to violate his rights under both the United States Constitution and the New York State Constitution, has defamed him, has intentionally and maliciously attempted to inflict emotional distress upon him, and has also violated his rights under his union contract, a contract which he is a beneficiary

of.

4. Claimant has been an employee of Respondent for over nineteen years, working as a Staff Attorney in Respondent's Department of Social Services Office of Counsel.

5. On or about February 25, 2016, Marni Bogart, Respondent's Director of Legal Affairs for its Department of Social Services, purported to have learned that one of Claimant's co-employees allegedly "overheard" Claimant make a comment about a gun and coming to the office and hurting others if he were to win the lottery. Claimant denies the statements attributed to him. Respondent through Bogart there and then suspended Claimant. Respondent then had Claimant escorted out of its office building at a time and in a manner purposefully and maliciously contrived to do the most damage to Claimant's reputation.

6. Thereafter, but on the same day, Bogart traveled to the Erie County Family Court building, a State office building, and showed security staff (who were not employees of Respondent's) Claimant's picture, and then directed said State personnel to "not let [Claimant] in the building" and stated that Claimant was "dangerous."

7. Upon information and belief, Bogart also communicated details about Claimant's suspension, and the inflammatory allegations underlying same, to at least one other person employed in the Family Court building who was not employed by Respondent.

8. Respondent also (unnecessarily and maliciously) notified its Social Services Department staff, via email, of Claimant's anticipated absence from work. Upon information and belief, this e-mail went out to over 400 recipients who did not need to know same; broadcasting anything about Claimant under the circumstances presented was a deliberate effort to invade Claimant's privacy, cause further harm to his reputation, and cause him further emotional distress.

9. Claimant's right to privacy, under both state and federal statues, was violated. Respondent, through Bogart's unlawful conduct, both past and present, created a *de facto* policy of violating the rights of Respondent's employees, including Claimant. Respondent, through its agents, officers and employees, including Bogart, has also defamed Claimant and intentionally inflicted emotional harm upon him. Respondent, through its conduct, has promoted a policy of allowing its Director of Legal affairs to violate the constitutional rights of its employees and others under both State and Federal law.

10. Claimant has suffered physical and emotional harm as a result of Respondent's actions. The constitutional and contractual rights of his that have been violated, and continue to be violated, together with the unlawful, malicious treatment of him by Bogart, was blatant and unjustified and has damaged him physically, mentally and professionally. As a result of the unlawful conduct of Respondent, Claimant JAMES HARMON is now seeking compensatory damages and other appropriate legal relief pursuant to said statutes.

11. This notice is made and served on behalf of Claimant JAMES HARMON in compliance with the provisions of Section 50-e of New York State General Municipal Law and such other laws and statutes as are in the case made and provided.

PLEASE TAKE FURTHER NOTICE, that the Claimant demands payment of said claim, and unless said claim is paid within a reasonable time, it is the intention of the Claimant to commence suit against the Respondent.

Dated: May 13, 2016
Hamburg, New York

James Harmon
Claimant

Andrew P. Fleming, Esq.
CHIACCHIA & FLEMING, LLP
Attorneys for Claimant
5113 South Park Avenue
Hamburg, New York 14075
Telephone: (716) 648-3030

VERIFICATION

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

JAMES HARMON, being duly sworn, deposes and states:

1. That deponent is the Claimant in the instant cause.

2. That deponent has read the foregoing Notice of Claim and knows its contents.

3. That the same is true to deponent's personal knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes them to be true.

JAMES HARMON

Sworn to before me this
13 day of May, 2016: Jennifer M. Kacmarski

JENNIFER M. KACMARSKI
Notary Public, State of New York
Qualified in Erie County
ID# 01KA6330533
Commission Expires September 14, 2019

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 19, 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:	*Trautwein, Tabitha by Co-Guardians Robert and Tammy Trautwein v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Robert and Tammy Trautwein Co-Guardians of Tabitha Trautwein 8125 Lewis Road Holland, New York 14080
Claimant's attorney:	Charles S. Desmond, II, Esq. Gibson, McAskill & Crosby, LLP 69 Delaware Avenue, Suite 900 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP:dld
Enc.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

This paper received at the
Erie County Attorney's Office
from Anthony McCabe on
the 12th day of July, 2016
at 1:30 a.m./p.m.
L. Otey - Legal
Assistant County Attorney

In the Matter of the Claim of

ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN as Co-GUARDIANS Of TABITHA TRAUTWEIN

against

COUNTY OF ERIE

NOTICE OF CLAIM

PLEASE TAKE NOTICE, that *ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN as Co-Guardians of TABITHA TRAUTWEIN,* hereby claim and demand from the *COUNTY OF ERIE* damages for personal injuries sustained by her and for medical and hospital expenses and loss of income incurred and/or to be incurred together with permanent, disfiguring and debilitating injuries as a result of the wrongful, unlawful, negligent and careless acts and omissions of the *COUNTY OF ERIE,* its agents, servants, employees, appointees and/or designees, and in support thereof, the Claimants state the following:

1. As a result of the serious injuries sustained by *TABITHA TRAUTWEIN* on April 12, 2016, her parents *ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN* were appointed her *Co-Guardians* on June 15, 2016, by the Hon. John F. O'Donnell, J.S.C. A copy of the Order to Show Cause for Appointment of Co-Guardians and related Order are attached as Exhibit A.

2. The post office address of the Claimants herein is 8125 Lewis Road, Holland, New York/Erie County Medical Center, 462 Grider Street, Buffalo, New York 14215; the name and post office address of the Claimant's attorney is GIBSON McASKILL & CROSBY, LLP, post office address is 69 Delaware Avenue, Suite 900, Buffalo, New York 14202-3866

(716-856-4200).

3. Upon information and belief, that the nature of this claim is for the wrongful, unlawful, negligent and careless acts and omissions of the County of Erie, its agents, servants, employees, appointees, contractors and/or designees in the planning, approval, design, sponsoring, mitigation, issuance of variances, application process, traffic conflict points, traffic interference reduction, traffic flow, New York State and Erie County driveway location standards, Center Road traffic access management plan, roadway safety plans and/or studies, road construction, road maintenance, road grade, improvement, repair, inspection, paving, changes, modifications, road line of site requirements and standards, noticing, signing, warning, signaling and the upkeep of Center Road/County Route 13 situate in the Town of Colden and County of Erie, New York, including, without limiting thereto, the area and location described in the applicable police report, which resulted in the occurrence of a certain motor vehicle accident involving the Claimant on the 12th day of April, 2016 as referenced in the Police Accident Report attached hereto as Exhibit B.

4. Upon information and belief, that said claim arose on the 12th day of April, 2016, at approximately 2:11 P.M., on Center Road in the Town of Colden, New York; the subject accident occurred when a 2004 Honda motor vehicle bearing New York Registration Plate No. BMR3215 being operated by Kody A. Schroeder southbound on Center Road collided with a 2011 GMC motor vehicle bearing New York Registration Plate 45465JK being operated by Jeffrey L. Bessey; that the County of Erie, its agents, servants, employees, appointees, contractors and/or designees, departments, agencies or divisions thereof, did act wrongfully, unlawfully, negligently, recklessly and engaged in careless acts or omissions in the planning, approval, design, sponsoring, mitigation, issuance of variances, application process, traffic

conflict points, failure to set and establish proper traffic speed limits, failing to afford proper line of site, traffic interference reduction, traffic flow, New York State driveway location standards, Center Road/County Route 13 traffic access management plan, roadway safety plans and/or studies construction, maintenance, improvement, repair, road grade, inspection, paving, changes, modifications, noticing, signing, warning, signaling and upkeep of Center Road/County Route 13 situate in Town of Colden, County of Erie, New York, affirmatively creating and permitting a defective, unsafe, hazardous, obstructive and inherently dangerous condition and latent deceptive trap to exist for motor vehicle traffic traveling upon, over or about Center Road/County Route 13 at the aforesaid location as described in the applicable Police Accident Report attached as Exhibit B.

5. That so far as is now able to be determined, the primary injuries sustained by the Claimant, *TABITHA TRAUTWEIN,* include without limiting thereto, injuries to her brain and head (including traumatic brain injury), neck, back, shoulders, arms, chest, hips, pelvis, fractured femur, loss of the ability to speak and eat on her own, with total reliance on others for the performance of routine hygiene functions. That by reason of the foregoing injuries, the Claimant *TABITHA TRAUTWEIN,* became and will continue to be disabled and will continue to suffer loss of enjoyment of life, traumatic brain injury, and psychological and emotional adjustment, and has and will require the services of physicians, surgeons, nurses, hospitals, therapy and medicines and will continue to incur such expenses in the future; that as a result of the aforesaid injuries and the resulting permanent disabilities the Claimant, *TABITHA TRAUTWEIN,* has been incapacitated and will continue to be incapacitated in the future, and as a result of the aforesaid injuries and resulting permanent disabilities, the Claimant's professional, social and personal activities, endeavors and hobbies have been totally impaired all to the damage of the Claimant.

PLEASE TAKE FURTHER NOTICE that the Claimant requests payment of her claims and damages sustained by her as hereinbefore set forth.

DATED: Buffalo, New York
July 12, 2016

RYAN P. CRAWFORD, ESQ. AND
CHARLES S. DESMOND, II, ESQ.,
on behalf of the Claimants,
ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN as Co-GUARDIANS Of TABITHA TRAUTWEIN
GIBSON, McASKILL & CROSBY, LLP
69 Delaware Avenue, Suite 900
Buffalo, New York 14202
Telephone: (716) 856-4200

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

RYAN P. CRAWFORD, being duly sworn, deposes and says:

That Your Deponent is the attorney of record for the Claimants in the above-entitled action and as such is filing the within Notice of Claim on behalf of the Claimants, *ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN as Co-Guardians of TABITHA TRAUTWEIN*; that Your Deponent has read the foregoing claim, notice and statement and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters Your Deponent believes the same to be true; the source of Your Deponent's knowledge and information is an investigation of this matter, documents and writings in Your Deponent's possession.

RYAN P. CRAWFORD, ESQ.

Subscribed and sworn to before me
this 12 day of July, 2016.

Notary Public

LISA J. GREINER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 13, 2017

EXHIBIT A

At the Supreme Court of the State of New York held in and for the County of Erie at the Supreme Court Building, 25 DELAWARE AVE Buffalo, N.Y. 14202 on the 15TH day of JUNE 2016.

PRESENT:
Hon. JOHN F. O'DONNELL, J.S.C.
Justice

In the Matter of the Application of ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN for the Appointment of Co-Guardians of the Person and Property of

TABITHA TRAUTWEIN,

an Alleged Incapacitated Person

Index No. SF 2016-901679

ORDER TO SHOW CAUSE FOR APPOINTMENT OF CO-GUARDIANS

With ORDER APPOINTING TEMPORARY CO-GUARDIANS

IMPORTANT

AN APPLICATION HAS BEEN FILED IN COURT BY ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN WHO BELIEVE YOU MAY NOT BE ABLE TO TAKE CARE OF YOUR PERSONAL NEEDS OR FINANCIAL AFFAIRS.

ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN ARE ASKING THAT SOMEONE BE APPOINTED TO MAKE DECISIONS FOR YOU. WITH THIS PAPER IS A COPY OF THE APPLICATION TO THE COURT SHOWING WHY ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN BELIEVE YOU MAY BE UNABLE TO TAKE CARE OF YOUR PERSONAL NEEDS OR FINANCIAL AFFAIRS.

BEFORE THE COURT MAKES THE APPOINTMENT OF SOMEONE TO MAKE DECISIONS FOR YOU, THE COURT HOLDS A

PAID
06/10/2016/ 15:38:53
ERIE COUNTY CLERK
RCPT # 160954008
SF2016901679

FILED
ACTIONS & PROCEEDINGS
JUN 16 2016
ERIE COUNTY
CLERK'S OFFICE

HEARING AT WHICH YOU ARE ENTITLED TO BE PRESENT AND TO TELL THE JUDGE IF YOU DO NOT WANT ANYONE APPOINTED. THIS PAPER TELLS YOU WHEN THE COURT HEARING WILL TAKE PLACE. IF YOU DO NOT APPEAR IN COURT, YOUR RIGHTS MAY BE SERIOUSLY AFFECTED.

YOU HAVE THE RIGHT TO DEMAND A TRIAL BY JURY. YOU MUST TELL THE COURT IF YOU WISH TO HAVE A TRIAL BY JURY. IF YOU DO NOT TELL THE COURT, THE HEARING WILL BE CONDUCTED WITHOUT A JURY.

THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE CLERK OF THE COURT ARE:

Name: Ellis W. Bozzolo

Clerk of the Guardianship Part, Erie County

Address: Room _____

25 DELAWARE AVE.

Buffalo, N.Y. 14202

Phone: (716) 845-9301

THE COURT HAS APPOINTED A COURT EVALUATOR TO EXPLAIN THIS PROCEEDING TO YOU AND INVESTIGATE THE CLAIMS MADE IN THE APPLICATION. THE COURT MAY GIVE THE COURT EVALUATOR PERMISSION TO INSPECT YOUR MEDICAL,

PSYCHOLOGICAL OR PSYCHIATRIC RECORDS. YOU HAVE THE RIGHT TO TELL THE JUDGE IF YOU DO NOT WANT THE COURT EVALUATOR TO BE GIVEN THAT PERMISSION.

THE COURT EVALUATOR'S NAME, ADDRESS AND TELEPHONE NUMBER ARE:

Name: NORA B. ROBSHAW

Address: 5672 MAIN ST.

WILLIAMSVILLE NY 14221

Phone: 633-4030

YOU ARE ENTITLED TO HAVE A LAWYER OF YOUR CHOICE REPRESENT YOU. IF YOU WANT THE COURT TO APPOINT A LAWYER TO HELP YOU AND REPRESENT YOU, THE COURT WILL APPOINT A LAWYER FOR YOU. YOU WILL BE REQUIRED TO PAY THAT LAWYER UNLESS YOU DO NOT HAVE THE MONEY TO DO SO.

AT THE HEARING, YOU WILL HAVE THE RIGHT TO PRESENT EVIDENCE, TO CALL WITNESSES, INCLUDING EXPERT WITNESSES, AND TO CROSS-EXAMINE WITNESSES, INCLUDING WITNESSES CALLED BY THE COURT.

On reading and filing the annexed Petition of ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN, duly verified on June, 8 2016, from which it appears that TABITHA TRAUTWEIN, the Alleged Incapacitated Person, now a resident of 8125 Lewis Road, Holland, New York 14080 in Erie County, is likely to suffer harm because she is unable to provide for her

personal and property needs and cannot understand and appreciate the nature of such inability; and it appearing that the said Alleged Incapacitated Person owns or possesses certain personal property within the State of New York;

LET TABITHA TRAUTWEIN, the Alleged Incapacitated Person; THOMAS J. QUATROCHE, JR. as Chief Executive Officer of Erie County Medical Center; and interested persons, namely BRANDIN E. TRAUTWEIN all SHOW CAUSE before me or the Justice JOHN F. O'DONNELL, J.S.C. presiding in PT-21 of this Court, to be held in the County of Erie, at the Supreme Court Building, ~~92 Franklin Street,~~ 25 DELAWARE AVENUE Buffalo, on the 20TH day of JULY 2016 at 10:00 A.M. that day or as soon thereafter as counsel can be heard;

WHY Co-Guardians should not be appointed for the personal and property needs of TABITHA TRAUTWEIN, the Alleged Incapacitated Person, within the State of New York, upon the Guardians qualifying in accordance with the statutes of the State of New York in such cases made and authorized to exercise one or more of the following powers as set forth in Mental Hygiene Law (MHL) § 81.21 with relation to property management and MHL § 81.22 with relation to personal needs management:

PROPERTY POWERS SOUGHT

(1) marshal the income and assets of TABITHA TRAUTWEIN, and establish bank, brokerage and other similar accounts in the name of the Co-Guardians for TABITHA TRAUTWEIN and endorse, collect, negotiate and deposit all negotiable instruments drawn to the order of TABITHA TRAUTWEIN, including, but not limited to, government entitlement checks; invest funds with the same authority as a trustee, pursuant to New York EPTL § 11-2.2; inventory personal belongings, and store or dispose, as appropriate;
(2) close or retitle in their names, as Co-Guardians, bank time deposits prior to maturity, upon the finding by this Court that, for purposes of § 9-I and § 238 of the Banking Law, the Order Appointing Co-Guardians shall be deemed a declaration of incompetence and no banking or savings institution shall impose any penalty upon the transaction;
(3) provide for the maintenance and support of TABITHA TRAUTWEIN;
(4) enter into contracts;
(5) create revocable or irrevocable trusts, including first party and/or pooled supplemental needs trusts, with property of TABITHA TRAUTWEIN'S which may extend beyond the incapacity or life of TABITHA TRAUTWEIN;

(6) renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer consistent with EPTL§ 2-1.11(c);
(7) authorize access to or release of confidential records;
(8) apply for, obtain and settle claims for government benefits;
(9) arrange and pay for health care services, health care aides and household help;
(10) defend or maintain civil proceedings on behalf of TABITHA TRAUTWEIN;
(11) retain attorneys, accountants and similar professionals;
(12) sign and file income tax returns and all other tax documents for any and all tax obligations, and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other related matters;
(13) engage in Medicaid and estate planning, subject to prior court approval of all proposed transfers, pursuant to MHL§ 81.21 (b);
(14) take actions required to make TABITHA TRAUTWEIN eligible for Medicaid;
(15) deal with Medicare and Medicaid claims, litigation and settlement;
(16) establish an irrevocable prepaid funeral plan in accordance with Medicaid regulations;
(17) pay reasonable funeral expenses out of any funds remaining in the guardianship account at death, to the extent that a prepaid funeral plan, if any, is insufficient to do so;
(18) settle and compromise a personal injury action or other civil matter; and
(19) have access to all of TABITHA TRAUTWEIN'S protected health information, including, but not limited to, all medical records, reports, statements, billing and payment matters in order to provide said documentation to GEICO and TRAVERLERS in order to pursue any and all claims concerning the automobile accident that the AIP was involved in.

PERSONAL POWERS SOUGHT

(1) determine who shall provide personal care or assistance to her;
(2) make decisions regarding social environment and other social aspects of her life;
(3) determine whether she should travel;
(4) determine whether she should have a license to drive;
(5) authorize access to or release of confidential records;
(6) make decisions regarding education;
(7) apply for government and private benefits;
(8) consent to or refuse generally accepted routine or major medical or dental treatment, consistent with the findings of this Court, the patient's wishes, and the standards set forth in MHL § 81.22(a)(8);
(9) choose her place of abode in accordance with the standards set forth in MHL § 81.22(a)(9);
(10) arrange for her admission to a skilled nursing facility or residential care facility; and
(11) have access to all of TABITHA TRAUTWEIN'S protected health information, including, but not limited to, all medical records, reports, statements, billing and payment matters in order to provide said documentation to GEICO and

TRAVERLERS in order to pursue any and all claims concerning the automobile accident that the AIP was involved in.

OTHER ACTIONS

WHY ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN should not be appointed Co-Guardians of the Person and Property of TABITHA TRAUTWEIN;

WHY the presence of TABITHA TRAUTWEIN, the Alleged Incapacitated Person, at the hearing or trial of the issues herein should be required; and

WHY the Petitioners should not have such other and further or different relief as may be just and proper; and

SUFFICIENT REASON APPEARING THEREFOR, it is:

ORDERED, that _____ of _____, _____, N.Y. _____, telephone _____, is, upon filing the required Consent and Affidavit of Responsibility, hereby appointed Court Evaluator to explain the proceeding to TABITHA TRAUTWEIN; to investigate the claims made in the petition and report to the Court pursuant to MHL § 81.09; and it is further

ORDERED, that _____ of _____, _____, N.Y. _____, telephone _____, is, upon filing the required Consent and Affidavit of Responsibility, hereby appointed Counsel to represent TABITHA TRAUTWEIN in this proceeding.

TEMPORARY GUARDIAN

ORDERED, that ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN are hereby appointed Temporary Co-Guardians of the person and property of TABITHA TRAUTWEIN to protect her health, well-being and property pending the hearing on this application with all the powers set forth above, to serve without bond; and it is further

ORDERED, that ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN shall maintain all accounts of TABITHA TRAUTWEIN in separate accounts to be used exclusively for the care, support and maintenance of TABITHA TRAUTWEIN, and ROBERT E. TRAUTWEIN and TAMMY L. TRAUTWEIN shall account therefor at such time as the annual accounting of the Guardians to be appointed is submitted.

SERVICE REQUIREMENTS

LET **personal delivery** pursuant to MHL 81.07 (e)(2)(i) of a copy of this Order and of the papers on which it is granted upon TABITHA TRAUTWEIN, the Alleged Incapacitated Person, not less than fourteen (14) days before the return date of this Order to Show Cause be deemed good and sufficient service; and

LET service of a copy of this Order to Show Cause and Notice of Proceeding by mail, pursuant to MHL § 81.07(g)(2)(i), upon BRANDIN E. TRAUTWEIN and THOMAS J. QUATROCHE, Jr. at the addresses listed in the Petition not less than fourteen (14) days before the return date of this Order to Show Cause be deemed good and sufficient service; and

LET service of a copy of the Order to Show Cause and of the papers on which it is granted by facsimile, overnight delivery or personal delivery, upon the Court Evaluator and Attorney for the Alleged Incapacitated Person appointed herein, within three (3) business days of the date of this Order, be deemed good and sufficient.

ENTER

/S/ JOHN F. O'DONNELL, J.S.C.

J.S.C.

GRANTED

JUN 15 2016
BY /S/ JAMES A. KASPRZAK
JAMES A. KASPRZAK
COURT CLERK

EXHIBIT B

Page 1 of 2 Pages

New York State Department of Motor Vehicles

POLICE ACCIDENT REPORT

MV-104A (6/04)

Local Codes: 16-025822 / R1EST25JSDSM

☐ AMENDED REPORT

Accident Date (Month / Day / Year)	Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene	Left Scene	Police Photos
4 / 12 / 2016	Tuesday	14:11	2	2	1	Accident Reconstructed ☑	☐	☐ Yes ☑ No

VEHICLE 1

VEHICLE 1- Driver License ID Number: 602700062 — State of Lic.: NY

Driver Name - exactly as printed on license: SCHROEDER, KODY A

Address (Include Number and Street): 13370 MILLER AVE — Apt. No.:

City or Town: CHAFFEE — State: NY — Zip Code: 14030

Date of Birth (Month / Day / Year): 7 / 21 / 1996 — Sex: M — Unlicensed: ☐ — No. of Occupants: 03 — Public Property Damaged: ☐

Name - exactly as printed on registration: SCHROEDER, KEVIN M — Sex: M — Date of Birth (Month / Day / Year): 8 / 14 / 1973

Address (Include Number and Street): 13370 MILLER AVE — Apt. No.: — Haz. Mat. Code: – — Released: ☐

City or Town: CHAFFEE — State: NY — Zip Code: 14030

Plate Number: BMR3215 — State of Reg.: NY — Vehicle Year & Make: 2004 HOND — Vehicle Type: 2DSD — Ins. Code: 639

Ticket/Arrest Number(s):

Violation Section(s):

Check if involved vehicle is:
- V E H I C L E 1 ☐ more than 95 inches wide;
- ☐ more than 34 feet long;
- ☐ operated with an overweight permit;
- ☐ operated with an overdimension permit.

VEHICLE 1 DAMAGE CODES

Box 1 - Point of Impact: 3 — Box 2 - Most Damage: 17

Enter up to three more damage codes: 17

Vehicle By: SOUTHTOWNS
Towed To: ECSO ALDEN

VEHICLE 2

☑ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN ☐ OTHER PEDESTRIAN

VEHICLE 2- Driver License ID Number: 479611488 — State of Lic.: NY

Driver Name - exactly as printed on license: BESSEY, JEFFREY L

Address (Include Number and Street): 8148 CENTER ROAD — Apt. No.:

City or Town: HOLLAND — State: NY — Zip Code: 14080

Date of Birth (Month / Day / Year): 12 / 8 / 1954 — Sex: M — Unlicensed: ☐ — No. of Occupants: 01 — Public Property Damaged: ☐

Name - exactly as printed on registration: BESSEY, JEFFREY L — Sex: M — Date of Birth (Month / Day / Year): 12 / 8 / 1954

Address (Include Number and Street): 8148 CENTER ROAD — Apt. No.: — Haz. Mat. Code: – — Released: ☐

City or Town: HOLLAND — State: NY — Zip Code: 14080

Plate Number: 45465JK — State of Reg.: NY — Vehicle Year & Make: 2011 GMC — Vehicle Type: PICK — Ins. Code: 011

Ticket/Arrest Number(s):

Violation Section(s):

Check if involved vehicle is:
- V E H I C L E 2 ☐ more than 95 inches wide;
- ☐ more than 34 feet long;
- ☐ operated with an overweight permit;
- ☐ operated with an overdimension permit.

VEHICLE 2 DAMAGE CODES

Box 1 - Point of Impact: 7 — Box 2 - Most Damage: 7

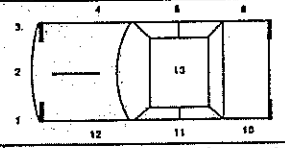
Enter up to three more damage codes: 8, 9, 14

Vehicle By: SOUTHTOWNS
Towed To: ECSO GARAGE

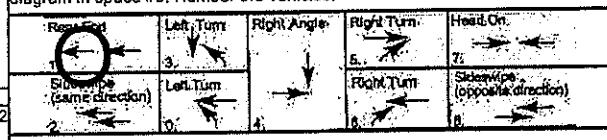
VEHICLE DAMAGE CODING:

1-13 SEE DIAGRAM ON RIGHT.

14. UNDERCARRIAGE 15. TRAILER 16. OVERTURNED 17. DEMOLISHED 18. NO DAMAGE 19. OTHER



Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.



ACCIDENT DIAGRAM

9.

Cost of repairs to any one vehicle will be more than $1000.
☐ Unknown/Unable to determine ☑ Yes ☐ No

Reference Marker	Coordinates (if available)
	Latitude/Northing: 4729632
	Longitude/Easting: 203062

Place Where Accident Occurred:

County: ERIE — ☐ City ☐ Village ☑ Town of: COLDEN

Road on which accident occurred: CENTER RD (Route Number or Street Name)

at 1) intersecting street: (Route Number or Street Name)

or 2) 3915 feet — miles — ☐ N ☑ S ☐ E ☐ W of BLANCHARD ROAD (Milepost, Nearest intersecting Route Number or Street Name)

Accident Description/Officer's notes

THIS CRASH REMAINS UNDER INVESTIGATION- REPORT WILL BE AMENDED AT THE CONCLUSION OF THE INVESTIGATION. IN THE VICINITY OF THE CRASH, CENTER ROAD IS A TWO LANE, PAVED ASPHALT HIGHWAY WITH ONE SOUTHBOUND LANE AND ONE NORTHBOUND LANE. VEHICLE #2 WAS TRAVELING SOUTHBOUND AND WAS IN THE PROCESS OF MAKING A RIGHT HAND TURN INTO A PRIVATE DRIVEWAY. VEHICLE # 1 WAS ALSO TRAVELING SOUTHBOUND AT A HIGH RATE OF SPEED AND REAR-ENDED VEHICLE # 2. AFTER

USE COVER SHEET: N

ALL INVOLVED

	8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names of all involved	Date of Death Only
A	1	1	A	1	19	M	08	05	6	HOLLAND8	1418	SCHROEDER, KODY A	
B	1	3	4	1	19	F	12	X	2	9992	1405	TRAUTWEIN, TABITHA	
C	1	6	1	1	28	M	01	X	1	9994	1405	KLOIBER, CHAUNCY J	4/12/2016
D	2	1	4	1	61	M	–	–	–			BESSEY, JEFFREY L	
E													
F													

Officer's Rank and Signature	Badge/ID No.	NCIC No.	Precint/Post Troop/Zone	Station/Beat Sector	Reviewing Officer	Date/Time Reviewed
DEPUTY Jeffrey S. Ely	0087	01400			BIEGANIEWICZ SIMON	4/13/2016 11:17
Print Name in Full: JEFFREY ELY						

New York State Department of Motor Vehicles

POLICE ACCIDENT REPORT

MV-104A (6/04)

Local Codes: 16-025822 / R1EST25JSDSM

☐ AMENDED REPORT

Accident Date Month	Day	Year	Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene	Left Scene	Police Photos
4	12	2016	Tuesday	14:11	2	2	1	Accident Reconstructed ☑	☐	☐ Yes ☑ No

VEHICLE ☐ VEHICLE ☐ BICYCLIST ☐ PEDESTRIAN ☐ OTHER PEDESTRIAN

Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.

Rear End 1. | Left Turn 3. | Right Angle | Right Turn 5. | Head On 7.
Sideswipe (same direction) | Left Turn | | Right Turn | Sideswipe (opposite direction)

ACCIDENT DIAGRAM

9.

VEHICLE DAMAGE CODING:

1-13 SEE DIAGRAM ON RIGHT.

14. UNDERCARRIAGE 17. DEMOLISHED
15. TRAILER 18. NO DAMAGE
16. OVERTURNED 19. OTHER

Cost of repairs to any one vehicle will be more than $1000.
☐ Unknown/Unable to determine ☐ Yes ☐ No

Reference Marker	Coordinates (if available)
	Latitude/Northing
	Longitude/Easting

Place Where Accident Occurred:
County ERIE ☐ City ☐ Village ☐ Town of
Road on which accident occurred (Route Number or Street Name)
at 1) intersecting street (Route Number or Street Name)
or 2) feet miles ☐ N ☐ S ☐ E ☐ W of (Milepost, Nearest intersecting Route Number or Street Name)

Accident Description/Officer's notes

IMPACT VEHICLE # 2 CAME TO FINAL REST IN A DRIVEWAY ON THE WEST SIDE OF CENTER ROAD. AFTER IMPACT VEHICLE # 1 CONTINUED SOUTHBOUND ON CENTER ROAD AND CAME TO FINAL REST IN A DITCH ON THE WEST SIDE OF CENTER ROAD.

USE COVER SHEET N

ALL INVOLVED

	8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names of all involved	Date of Death Only
A													
B													
C													
D													
E													
F													

Officer's Rank and Signature	Badge/ID No.	NCIC No.	Precint/Post Troop/Zone	Station/Beat Sector	Reviewing Officer	Date/Time Reviewed
DEPUTY Jeffrey S. Ely	0087	01400			BIEGASIEWICZ, SIMON	4/18/2016 17:10
Print Name in Full: JEFFREY ELY						

New York State Department of Motor Vehicles

POLICE REPORT FOR FATAL MOTOR VEHICLE ACCIDENTS

MV-104D (3/02)

Local Code	Accident Date Month	Day	Yr.	Military Time	County	City/Town/Village	No. Killed	No. Vehicles	Work Related
16-025822 R1EST25JSDSM	04	12	2016	14:11	ERIE	COLDEN, TOWN OF	1	2	☐ Yes ☑ No

Name and Address of Deceased
1: KLOIBER, CHAUNCY J 7077 OLEAN RD APT 2 WALES NY 14139

ACCIDENT DATA

Speed Limit (MPH): 55

Location (Route or Street Name): CENTER RD

Estimated Speed:
Vehicle 1 _____ MPH ☑ Unknown Vehicle 2 7 MPH ☐ Unknown Vehicle _____ MPH ☐ Unknown

Vehicle Model (for example, Mustang or Corvette):
Vehicle 1 CIVIC LX Vehicle 2 3500 4X4 Vehicle _____

Roadway Surface:
☐ Concrete ☑ Blacktop ☐ Brick or Block ☐ Dirt ☐ Slag ☐ Gravel ☐ Stone ☐ Other

No. of Lanes: 2

Roadway Flow: ☐ One Way Traffic ☐ Divided highway, other barrier or barrier type unknown ☐ Divided highway, median strip ☐ Divided highway, guard rail ☑ Not physically divided

EMERGENCY MEDICAL SERVICES *

	Time (Military):
Notified	14:11
Arrived at Scene	14:19
Arrived at Hospital	

HOSPITAL INFORMATION

If the victim was taken to a hospital outside of NYS, give name, county and state of that hospital:
1: ERIE COUNTY MEDICAL CENTER

If the victim was transferred to another hospital (after initial transportation), give the name, county and state of that hospital:

OCCUPANT DATA

	Name	Deceased Yes/No	Time of Death	Extricated Yes/No**	Type of Extrication Equip. Used	Air Bags Deployed Yes/No	Air Bags Not in Vehicle	Initial Point of Impact to Vehicle***
VEHICLE 1	Driver: SCHROEDER, KODY A	NO		NO		YES	NO	03 - FRONT RIGHT
	Passenger: TRAUTWEIN, TABITHA L	NO		YES	JAWS OF LIFE	YES	NO	03 - FRONT RIGHT
	Passenger: KLOIBER, CHAUNCY J	YES	14:10	NO		YES	NO	03 - FRONT RIGHT
VEHICLE 2	Driver: BESSEY, JEFFREY L	NO		NO		NO	NO	07 - REAR RIGHT
	Passenger							
	Passenger							
VEHICLE								
	Passenger							
	Passenger							

* This includes any type of EMS service (for example, fire, police, private). If you are unable to furnish the EMS data, please give the name, address and plate number of the ambulances so we can contact them:

** To be "extricated", the victim must be pried from the wreckage. Unfastening the seat belt is not considered "extricated".

*** Indicate the first area of the vehicle that was impacted, for example, right front, undercarriage.

Additional Information

SIGN HERE	Officer's Rank and Signature	Badge/ID No	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	DEPUTY	0087	01400			BIEGASIEWIC	4/18/2016
	Print Name in Full: JEFFREY ELY					SUPVN	11:47

New York State Department of Motor Vehicles

TRUCK and BUS SUPPLEMENTAL POLICE ACCIDENT REPORT

MV-104S (10/05)

Page 1 of 1 Pages

Local Codes: 16-025822 / R1EST25JSDSM

☐ AMENDED REPORT

Mail To: NYS Dept. of Motor Vehicles, Accident Records Bureau, PO Box 2084, Albany NY 12220-0084

INSTRUCTIONS: You must complete this form:
- if at least one of the vehicles involved is
  - a truck having a GVWR or GCWR > 10,000 lbs.; or
  - a vehicle with a Haz Mat placard; or
  - a bus designed to carry 9 or more persons including the driver
- AND at least one of the following conditions is met:
  - at least one person sustained fatal injuries
  - at least one person was transported for IMMEDIATE medical treatment
  - at least one vehicle is disabled and was towed/transported from the scene.

Number of:
- 1 Trucks having a GVWR or GCWR > 10,000 lbs.
- 0 Vehicles with a Haz Mat placard
- 0 Buses designed to carry 9 or more persons

Number of Vehicles:
- 2 Towed/transported from scene due to damage

Number of Persons:
- 1 Sustaining fatal injuries
- 2 Transported for IMMEDIATE medical treatment

ACCIDENT DATE Mo.	Day	Year	MILITARY TIME	COUNTY	CITY/TOWN/VILLAGE
4	12	2016	14:11	ERIE	COLDEN, TOWN OF

DRIVER

DRIVER LICENSE ID #: 4 7 9 6 1 1 4 8 | STATE OF LIC.: NY

DRIVER NAME - exactly as printed on license (Last, First, M.I.): BESSEY, JEFFREY L

1 LICENSE CLASS (4): 1 A, 2 B, 3 CDL C, 4 D, 5 DJ, 6 E, 7 M, 8 MJ, 9 OTHER, 10 DM

DATE OF BIRTH: Mo. 12 | Day 8 | Year 1954

SEX (7): 1 Male, 2 Female — 1

CARRIER

CARRIER NAME: JEFFREY L. BESSEY

STREET OR P.O. BOX: 8148 CENTER ROAD | CITY: HOLLAND | STATE: NY | ZIP CODE: 14080

TOTAL AXLES (Includes trailers) (8): 2

PLATE NUMBER: 45465JK | STATE OF REG.: NY

CARRIER'S IDENTIFICATION NUMBERS: US DOT 0 1 5 3 0 3 1 8 | ICC MC

VEHICLE IDENTIFICATION NUMBER: 1 G T 4 2 4 C 8 9 8 F 1 0 7 2 1 4

(2) WEIGHT RATING OF TRUCK POWER UNIT (2): 1 Less thank or equal to 10,000 lbs. / 2 10,001 - 26,000 lbs. / 3 More than 26,000 lbs.

(3) VEHICLE CONFIGURATION (2):
1 Bus (seats for more than 15 people, including driver)
2 Single-unit Truck: (2-axle, 6-tire)
3 Single-unit Truck: (3 or more axles)
4 Truck/Trailer
5 Truck Tractor (bobtail)
6 Tractor/Semi-trailer
7 Tractor/Doubles
8 Tractor/Triples
9 Unknown Heany Truck, cannot classify
10 Passenger Car - only record when vehicle displays a Hazardous Material placard
11 Light truck (van, mini-van, panel, pickup, sport utility vehicle) only record when vehicle displays a HM placard
12 Bus (seats for 9-15 people, including driver)

(9) TRAFFIC WAY (1):
1 Two-way, not divided
2 two-way, divided unprotected median
3 Two-way, divided, positive median barrier
4 One way not divided
5 Not reported

(4) CARGO BODY TYPE (9):
1 Bus (seats for more than 15 perople, including driver)
2 Van/Enclosed Box
3 Cargo Tank
4 Flatbed
5 Dump
6 Concrete Mixer
7 Auto Transporter
8 Garbage/Refuse
9 Other
10 Grain, Chips, Gravel
11 Pole
12 Bus (seats for 9-15 people, including driver)

(10) ACCESS CONTROL (1):
1 No Access Control
2 Full Access Control
4 Partial Access Control

(5) HAZARDOUS MATERIALS INVOLVEMENT (2): Does vehicle have Haz Mat placard? 1 Yes 2 No

COPY FROM PLACARD: 4-digit identificaiton number from diamond/orange panel | 1 or 2-digit number from bottom of diamond

NAME OF HAZ MAT CLASS:

(6) WAS HAZARDOUS CARGO RELEASED FROM VEHICLE (other than fuel from fuel tank) ? (2): 1 Yes 2 No

(11) SEQUENCE OF EVENTS (FOR THIS VEHICLE): (9, 12, 13, 14)
1 Ran Off Road (noncollision)
2 Jackknife (noncollision)
3 Overturn/Rollover (noncollision)
4 Downhill Runaway (noncollision)
5 Cargo Loss or Shift (noncollision)
6 Explosion or Fire (noncollision)
7 Separation of Units (noncollision)
8 Involving Pedestrian (collision)
9 Involving Motor Vehicle in Transport (collision)
10 Involving Parked Motor Vehicle (collision)
11 Involving Train (collision)
12 Involving Pedalcycle (collision)
13 Involving Animal (collision)
14 Involving Fixed Object (collision)
18 Cross Median/Centerline (noncollision)
19 Equipment Failure (noncollision) (brake failure, blown tires, etc.)
20 Other (noncollision)
21 Unknown (noncollision)
22 With Work Zone Maintenance Equipment (collision)
23 With Other Movable Object (collision)
24 With Unknown Movable Object (collision)

OFFICER'S RANK AND SIGNATURE	BADGE/ID NO.	NCIC NO.	DATE OF REPORT
DEPUTY Jeffrey S. Ely	0087	01400	4/12/2016

PRINT NAME IN FULL: JEFFREY ELY

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 26, 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:	*M&B Flix LLC v. County of Erie, Erie County Division of Sewerage Management*
Document Received:	Verified Petition
Name of Claimant:	M&B Flix LLC 388 Evans Street Williamsville, New York 14221
Claimant's attorney:	Katherine M. Liebner, Esq. Gross Shuman Brizdle & Gilfillan, P.C. 465 Main Street Suite 600 Buffalo, New York 14203

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
SUPREME COURT : COUNTY OF ERIE

M&B FLIX LLC

Petitioner,

v.

COUNTY OF ERIE,
ERIE COUNTY DIVISION OF SEWERAGE MANAGEMENT

Respondents.

NOTICE OF PETITION

Index No. 808078/2016

Hon. John L. Michalski, J.S.C.

Upon the annexed petition of Petitioner, M&B Flix LLC ("Petitioner"), with attached exhibits thereto, by and through its attorneys, Gross, Shuman, Brizdle & Gilfillan, P.C., an application will be made to this Court at a courthouse located at 25 Delaware Ave. Part 18 - 3d Floor Buffalo, New York, 14202, on August 25, 2016 at 10:00 (am)/pm or as soon thereafter as counsel can be heard, for an order granting leave to serve a late notice of claim on Respondents pursuant to GML § 50-e and County Law § 52.

DATED: Buffalo, New York
July 20, 2016

Yours, etc.,

GROSS, SHUMAN, BRIZDLE &
GILFILLAN, P.C.

By: /s/ Katherine M. Liebner
Katherine M. Liebner, Esq.
Attorneys for Petitioner
Office and P.O. Address
465 Main Street, Suite 600
Buffalo, New York 14203
(716) 854-4300

TO: County of Erie
County Attorney
95 Franklin Street, Suite 1634
Buffalo, New York 14202

Erie County Division of Sewerage Management
County Attorney
95 Franklin Street, Suite 1634
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

M&B FLIX LLC

Petitioner, **PETITION**

v. Index No.

COUNTY OF ERIE,
ERIE COUNTY DIVISION OF SEWERAGE
MANAGEMENT

Respondent.

The Petitioner, M&B Flix LLC, by and through its attorneys, Gross, Shuman, Brizdle & Gilfillan, P.C., brings this Petition as against the Respondents, the County of Erie and Erie County Division of Sewerage Management (collectively, the "Respondents") pursuant to GML § 50-e and County Law § 52:

1. This special proceeding is brought seeking leave to file a late notice of claim on the Respondents pursuant to GML § 50-e and County Law § 52.

2. This proceeding is brought in connection with Respondents' use and misuse of an easement and temporary easement dated May 22, 2012 between the Petitioner and County of Erie (the "Easement"). The Easement is for certain real property owned by Petitioner and located near 4901 Transit Road, Depew, New York, 14043 (SBL 115.03-1-58.2 and 59) (the "Property"). The Easement was granted in connection with Respondents' construction of a maintenance sewer in Erie County Sewer District No. 4.

3. Petitioner has already served a verified notice of claim on Respondents by certified mail/return receipt requested on July 19, 2016. True and accurate copies of the verified notice of claim and the affidavit of service are attached as **Exhibit A and B**, respectively.

4. As alleged in the verified notice of claim, Respondents' wrongful acts began in July 2015, but have continued each and every day thereafter to the present. This application for leave to serve late notice of claim, therefore, only applies to those claims in the verified notice of claim that would have arisen before the 90 days when it was served on the Respondents.

5. The wrongful acts alleged in the verified notice of claim include trespass, conversion, unjust enrichment, private nuisance, waste and injury to property, negligence and breach of contract by violating the terms and conditions of the Easement in their use of the Property; installing fencing on the Property in violation of the Easement; trespassing on the Property without the right or authority to do so; failing to protect against damage to the Property by all reasonable means; causing or committing damage to the Property; failing to fix the damage and restore the Property; and converting and misappropriating Petitioner's water on the Property.

6. Courts are afforded discretion in granting motions for leave to serve late notice of claim on a municipality under GML § 50-e(5). In deciding to grant such motions "the court shall consider whether or not the entity sought to be served received timely notice of the claim, whether or not it has been substantially prejudiced, and the reason for the delay." *Speed v. Holly Patterson Extended Care Facility, 10 A.D.3d 400, 402 (2nd Dep't 2004).*

7. The reason and purpose behind the notice of claim requirements is to enable a municipality to investigate, collect evidence and evaluate the merit of the claim while the

information is still available and before witnesses depart or conditions change. *Ramos v. New York City Transit Authority, 60 A.D.3d 517(1st Dep't 2009).*

8. Here, there is no lack of notice or undue prejudice to the Respondents who have actual knowledge of the essential facts because they themselves have been engaged in the violation of the Easement.

9. There is also no undue delay. GML § 50-e limits the granting of leave for late notice of claim to one year and 90 days after the date of the incident in question. As, upon information and belief, the claims arising from Respondents' use and misuse of the Easement began in or about July 2015, this motion is well within the time allowed under the statute.

10. Furthermore, on or about May 12, 2016, Petitioner advised Respondents of their violation by letter. Although a representative of the Respondents made statements acknowledging the violations and that such violations would cease, Respondents did not cease their violations (*see Ex. A* (verified notice of claim – attachment *Ex. B*)).

11. Concurrent with "all relevant facts and circumstances" the court may consider sufficiency of an excuse for needing the extension of GML § 50-e(5). The reason for the delay was Petitioner's belief that Respondents would honor the terms of the Easement and cease the violations. The failure of Respondents to stop the violations even after the May 12, 2016 letter demonstrated that it was necessary to bring this notice of claim. However, even "the lack of a sufficient excuse is not fatal". *Speed, 10 A.D.3d at 402.* In fact, where the court finds "timely notice and the absence of prejudice, even the absence of a reasonable excuse for failing to timely serve a notice of claim will not bar the granting of leave to serve a late notice of claim." *Medley v. Cichon, 305 A.D.2d 643, 645 (2d Dep't 2003).*

12. Based on the foregoing, Petitioner respectfully requests that this motion be granted and Petitioner be permitted to serve the verified notice of claim for all claims against Respondents that arose before the 90 days when it was served.

Dated: Buffalo, New York
July 20, 2016

/s/ Katherine M. Liebner
Katherine M. Liebner, Esq

Doc #491983.1

EXHIBIT A

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 26, 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:	*Stevenson, Alesia v. County of Erie, Erie County Department of Social Services and Buffalo Transportation*
Document Received:	Notice of Claim
Name of Claimant:	Alesia R. Stevenson 96 Lemon Street Buffalo, New York 14204
Claimant's attorney:	Cheryl M. Reed, Esq. William K. Mattar, P.C. 6720 Main Street, Suite 100 Williamsville, New York 14221-5986

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.

IN THE MATTER OF THE CLAIM OF:

ALESIA R. STEVENSON
96 Lemon Street
Buffalo, NY 14204

Claimant,

-against-

NOTICE OF CLAIM

COUNTY OF ERIE
ATTENTION TO COUNTY ATTORNEY
95 Franklin Street
Buffalo, NY 14202

COUNTY OF ERIE DEPARTMENT OF SOCIAL SERVICES
95 Franklin Street
Buffalo, NY 14202

BUFFALO TRANSPORTATION INC.
289 Ramsdell Avenue
Buffalo, NY 14216,

Respondents.

PLEASE TAKE NOTICE that **ALESIA R. STEVENSON**, hereby makes claim against the **COUNTY OF ERIE, COUNTY OF ERIE DEPARTMENT OF SOCIAL SERVICES,** and **BUFFALO TRANSPORTATION INC.,** and in support thereof Claimant alleges:

1. That the undersigned Claimant, ALESIA R. STEVENSON, residing at 96 Lemon Street, Buffalo, NY 14204, by and through her attorney WILLIAM MATTAR, P.C. , Cheryl M. Reed Esq., of counsel, 6720 Main Street, Suite 100, Williamsville, NY 14221-5986, claims damages against the COUNTY OF ERIE, and/or COUNTY OF ERIE DEPARTMENT OF SOCIAL SERVICES, and BUFFALO TRANSPORTATION INC., for personal injuries, pain and suffering, general and special damages, medical expenses, and property damages sustained by her.

2. That the said injuries were sustained by ALESIA R. STEVENSON on or about June 8, 2016 at approximately 9:30 a.m. while on her way to Buffalo General Medical Center, 100 High Street, Buffalo New York 14203. On the date of the incident, our client was injured as a result of the negligence and carelessness of BUFFALO TRANSPORTATION INC. employees in the course of their employment. The BUFFALO TRANSPORTATION INC. employees were operating a van that was transporting ALESIA R. STEVENSON to Buffalo General Medical Center. This van was commissioned by the COUNTY OF ERIE DEPARTMENT OF SOCIAL SERVICES for Medicaid transportation. The employees of BUFFALO TRANSPORTATION INC. negligently and carelessly dropped ALESIA R. STEVENSON and her wheelchair when removing her from the van, causing ALESIA R. STEVENSON to be injured. At the time of ALESIA R. STEVENSON's injury, BUFFALO TRANSPORTATION INC. was acting as a servant, agent, contractor or employee of the COUNTY OF ERIE.

3. That the Claimant's damages and injuries occurred as a result of the negligence, carelessness, and reckless disregard for the safety of others including Claimant, ALESIA R. STEVENSON, by the COUNTY OF ERIE, and/or COUNTY OF ERIE DEPARTMENT OF SOCIAL SERVICES, and BUFFALO TRANSPORTATION INC., its servants, agents or employees in negligently acting when transporting Claimant and her wheelchair, along with the other acts of carelessness and recklessness.

4. That the aforesaid COUNTY OF ERIE, and/or COUNTY OF ERIE DEPARTMENT OF SOCIAL SERVICES, and BUFFALO TRANSPORTATION INC. by and through its agents, servants, contractors, and employees caused the dangerous condition by negligently transporting the Claimant from the vehicle.

5. That as a result of the foregoing, the Claimant, ALESIA R. STEVENSON, sustained very serious injuries, including injuries to the head, neck, and upper extremities. Some of these injuries will be of a permanent or indefinite duration, and Claimant, ALESIA R. STEVENSON, has and will, in the future be forced to expend sums of money for hospitals, doctors and other medical expenses.

6. That the said injuries were occasioned solely and wholly as a result of the negligence of the COUNTY OF ERIE, and/or COUNTY OF ERIE DEPARTMENT OF SOCIAL SERVICES, and BUFFALO TRANSPORTATION INC. and through its agents, servants and employees and without any negligence on the part of the Claimant contributing thereto.

DATED: Williamsville, New York
July 19, 2016

WILLIAM MATTAR, P.C.
Cheryl M. Reed, Esq.
Attorney for Claimant
6720 Main Street
Suite 100
Williamsville, NY 14221-5986
(716)633-3535

RECEIVED
JUL 21 2016
ERIE COUNTY
DEPARTMENT OF LAW

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

ALESIA R. STEVENSON, being duly sworn, deposed and say that she is the Claimant in this action; that she has read the foregoing Notice of Claim and know the contents thereof; that the same is true to the knowledge of deponents, except as to matters therein stated to be alleged on information and belief, and that as to those matters they believe them to be true.

ALESIA R. STEVENSON

Sworn to before me this
23rd day of June, 2016

Notary Public

JOSEPH GRZYBOWSKI
Lic. #01GR6286555
Notary Public-State of New York
Qualified in ERIE
My Commission Expires JULY 29,2017

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 26, 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:	*Bartoszewicz, Lynn v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Lynn Bartoszewicz 16 Greenmeadow Drive Lancaster, New York 14086
Claimant's attorney:	Richard A. Grimm, III Magavern, Magavern & Grimm LLP 1100 Rand Building 14 Lafayette Square Buffalo, New York 14203

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.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the matter of the claim of

LYNN BARTOSZEWICZ

Claimant,

vs.

COUNTY OF ERIE

Respondent.

NOTICE OF CLAIM PURSUANT TO GENERAL MUNICIPAL LAW § 50-e

PLEASE TAKE NOTICE that LYNN BARTOSZEWICZ hereby makes a claim against the COUNTY OF ERIE for injuries and damages sustained as a result of a motor vehicle accident which occurred on April 27, 2016, and states as follows:

1. The Claimant LYNN BARTOSZEWICZ resides at 16 Greenmeadow Drive, Lancaster, New York 14086.

2. The Claimant is represented by the law firm of Magavern Magavern Grimm LLP, with offices at 1100 Rand Building, 14 Lafayette Square, Buffalo, New York 14203.

3. The claim is for injuries and damages sustained as the result of a motor vehicle accident which occurred on April 27, 2016, at approximately 12:00 p.m. on Kenmore Avenue near its intersection with Englewood Avenue in the City of Buffalo, New York. Claimant was attempting a left hand turn from Kenmore Avenue into a Valu Home Center store located at 396 Kenmore Avenue when she struck a curb. The County of Erie was negligent in the:

> creation of, and failure to correct a dangerous and defective condition(s) on Kenmore Avenue; improper design and construction of a curb cut and entrance to the retail location at or about 396 Kenmore Avenue, Buffalo New York, and such other and further acts of negligence as shall be determined.

4. The items of damages claimed are: Severe injuries to Claimant LYNN BARTOSZEWICZ, including a closed head injury, dental injuries, facial fractures, facial lacerations, facial bruising, fractures to the bones of her right hand and other soft tissue injuries to various parts of her body. In addition to the personal injuries suffered in this accident, Claimant has lost time from her employment and has been forced to expend sums, and will be forced to expend sums for medical care and expenses; and such other general and special damages as may be determined.

5. This Claim is hereby presented for adjustment and payment.

PLEASE TAKE NOTICE, that unless this Claim is adjusted and paid within a reasonable amount of time, it is the intention of the Claimant to commence suit against the COUNTY OF ERIE.

Dated: July 21, 2016
Buffalo, New York

Lynn Bartoszewicz
LYNN BARTOSZEWICZ

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

I, LYNN BARTOSZEWICZ, am the Claimant in the above-entitled action. I have read the foregoing Claim and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true

Lynn Bartoszewicz
LYNN BARTOSZEWICZ

Sworn to before me this
21st day of July, 2016.

Notary Public

RICHARD A. GRIMM, III
Registration No. 02GR4905611
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Aug. 24, 2017

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 26, 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:	*Savage, Damone v. County of Erie, Erie County District Attorney's Office, State of New York Department of Corrections and Community Supervision ("DOCCS")*
Document Received:	Notice of Claim
Name of Claimant:	Damon Savage 1692 Cannonball Court Lawrence, Georgia 30044
Claimant's attorney:	Steven M. Cohen, Esq. Hogan Willig 2410 North Forest Road Getzville, New York 14068

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP:dld
Enc.

STATE OF NEW YORK : COUNTY OF ERIE

In the Matter of the Claim of

DAMONE SAVAGE,

Claimant,

NOTICE OF CLAIM

TO: **COUNTY OF ERIE**
ERIE COUNTY DISTRICT ATTORNEY'S OFFICE,
STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION ("DOCCS")

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

1. The post office address of the Claimant is 1692 Cannonball Court, Lawrenceville, GA 30044.

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

3. The nature of the claim of DAMONE SAVAGE ("Claimant") is to recover money damages resulting from Claimant's wrongful indictment, conviction and imprisonment for seven years of incarceration by COUNTY OF ERIE and the STATE OF NEW YORK, as further set forth below.

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

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

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

7. Upon information and belief, the current Acting Commissioner of DOCCS is ANTHONY J. ANNUCCI.

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

Claimant's Wrongful Indictment, Conviction and Imprisonment

9. On and prior to March 1, 2013, Claimant in the City of Buffalo, New York.

10. On January 18, 2013, at approximately 6:15pm, two Buffalo police officers approached Claimant and his friends while they were at the corner of East Delevan Avenue and Roslyn Street. Upon being approached and asked what was going on by police, Claimant began to walk in the other direction at which point he was soon after tackled to the ground by police and found to be in possession of a handgun.

11. On March 1 2013, Claimant was indicted by the Grand Jury of Erie County and charged with criminal possession of a weapon in the second degree.

12. Thereafter, the Claimant entered a plea of guilty and was convicted on the November 12, 2013 of second degree criminal possession of a weapon.

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

13. Following Claimant's conviction, Claimant was sentence on November 12, 2013 by Judge Russell P. Buscaglia to a period of confinement for a term of seven years, with five years post release.

14. Following Claimant's conviction and sentencing on November 12, 2013 he was confined to various holding facilities from 2013 to 2016.

15. During this time, an appeal was filed by the Claimant with the Appellate Division Fourth Department for the Supreme Court of the State of New York, in which the Claimant looked to suppress physical evidence and oral statements to police.

16. Finding that the officers' conduct was not justified from its inception and that there were insufficient facts to provide the police with the requisite "objective, credible reason, indicative of criminality" to justify a level one encounter, the Claimant moved for an Order to vacate the Judgment of conviction entered against him pursuant to CPL § 440.10 on April 24, 2015.

17. On March 25, 2016, in proceedings before the Appellate Division Fourth Department for the Supreme Court of the State of New York, the verdict entered against Claimant on November 12, 2013 for criminal possession of a weapon was vacated.

18. On April 12, 2016, the 2013 indictment in *People v Savage*, Indictment No. 00275-2013 in the New York State Supreme Court, was dismissed.

19. The vacatur and Judgment of Conviction and the dismissal of the indictment against Claimant were granted pursuant to paragraphs (a) and (g) of subdivision one of section 440.10 of the Criminal Procedure Law of the State of New York.

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

20. The claim ACCRUED on April 14, 2016, the date on which Claimant was released from custody by DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

CONCLUSIONS

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

22. Claimant DAMONE SAVAGE was wrongfully incarcerated and confined and served imprisonment as a result of this wrongful indictment, conviction, and imprisonment by the ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, COUNTY OF ERIE.

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

24. Claimant DAMONE SAVAGE was wrongfully incarcerated and confined and served years of imprisonment as a result of this conduct by the NEW YORK STATE SUPREME COURT, ERIE COUNTY.

25. Claimant DAMONE SAVAGE was denied of his right to liberty as a result of the reckless, grossly negligent, careless and unlawful actions of the NEW YORK STATE BOARD OF PAROLE, DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

26. Claimant DAMONE SAVAGE was wrongfully incarcerated and confined and served years of imprisonment as a result of this wrongful indictment, conviction, and imprisonment by the NEW YORK STATE BOARD OF PAROLE, DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

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

27. This Claim ACCRUED on April 14, 2016, the date on which Claimant was released from custody by DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

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

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

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

Dated: Amherst, New York
July 13, 2016

HOGANWILLIG, PLLC

Diane R. Tiveron, Esq.
Attorneys for Claimant
2410 North Forest Road, Suite 301
Amherst, New York 14068
Telephone: (716) 636-7600

VERIFICATION

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

DIANE R. TIVERON, ESQ., being duly sworn, deposes and says:

That she is the attorney for the Claimant in the above entitled action with offices located at 2410 N. Forest Road, Amherst, New York 14068; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to her knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters she believes them to be true.

That the reason why this Verification is made by deponent instead of the Claimant is because the Claimant is not within the County of Erie, which is the County where deponent has her office. Deponent further says that the grounds of her belief as to all matters in the Notice of Claim not stated to upon her knowledge are based upon conversations with Claimant and a review of correspondence between the parties and other writings relevant to this action.

Diane R. Tiveron, Esq.

Subscribed and sworn to before me
this 13th day of July, 2016.

Notary Public

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

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 27, 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:	*Cummings, India T., Estate of, by Tawana R. Wyatt, Administratrix, v. County of Erie, Erie County Sheriff's Office, Sheriff Howard, City of Lackawanna, Lackawanna Police Department*
Document Received:	Notice of Claim
Name of Claimant:	Tawana R. Wyatt 354 Magnolia Street Rochester, New York 14611
Claimant's attorney:	James M. VanDette, Esq. VanDette Penberthy LLP 617 Main Street, Suite 203 Buffalo, New York 14203

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.

In the Matter of the Claim of

TAWANA R. WYATT, as Administratrix of the Estate of INDIA T. CUMMINGS,

Claimant,

NOTICE OF CLAIM

- against -

ERIE COUNTY, ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY SHERIFF TIMOTHY B. HOWARD, CITY OF LACKAWANNA and CITY OF LACKAWANNA POLICE DEPARTMENT,

RECEIVED
ERIE COUNTY
SHERIFF'S OFFICE
2016 JUL 26 AM 10: 19

TO: ERIE COUNTY,
ERIE COUNTY SHERIFF'S OFFICE,
ERIE COUNTY SHERIFF TIMOTHY B. HOWARD,
CITY OF LACKAWANNA and
CITY OF LACKAWANNA POLICE DEPARTMENT

PLEASE TAKE NOTICE, that TAWANA R. WYATT, as Administratrix of the Estate of INDIA T. CUMMINGS, has and hereby makes claim against ERIE COUNTY, ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY SHERIFF TIMOTHY B. HOWARD, CITY OF LACKAWANNA and CITY OF LACKAWANNA POLICE DEPARTMENT, and in support of said claim states the following:

1. The Post Office address of the claimant is 354 Magnolia St., Rochester, New York 14611.

2. The attorneys for the claimants are VANDETTE PENBERTHY LLP, 617 Main Street, Suite 203, Buffalo, New York 14203.

3. On or about the 5th day of July, 2016, the claimant, TAWANA R. WYATT, was appointed Administratrix of the Estate of INDIA T. CUMMINGS pursuant to an Order of the

Surrogate's Court of the County of Erie and State of New York, and Letters of Administration of the Estate of INDIA T. CUMMINGS, were served on the claimant, TAWANA R. WYATT, and the said claimant thereupon duly qualified and thereafter acted and is still acting as such Administratrix.

4. The claim on behalf of the decedent, INDIA T. CUMMINGS, is for personal injuries, including without limitation, loss of life, and the claim of TAWANA R. WYATT, as Administratrix of the Estate of INDIA T. CUMMINGS, deceased, is for funeral expenses, pecuniary loss, wrongful death and for consequential damages generally on behalf of the decedent's distributees.

5. The claim arose at Erie County Holding Center, located at 10 Delaware Avenue, in the City of Buffalo, County of Erie and State of New York. The claim also arose at various locations while the decedent, INDIA T. CUMMINGS, was in the custody of ERIE COUNTY, ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY SHERIFF TIMOTHY B. HOWARD, CITY OF LACKAWANNA and CITY OF LACKAWANNA POLICE DEPARTMENT.

6. The claim arose in substance as follows: Following the arrest of INDIA T. CUMMINGS, the claimant's decedent sustained a left humerus fracture and various other injuries while in the custody of ERIE COUNTY, ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY SHERIFF TIMOTHY B. HOWARD, CITY OF LACKAWANNA and/or the CITY OF LACKAWANNA POLICE DEPARTMENT, which ultimately led to her death on the 21st day of February, 2016. Additionally, between the 1st day of February, 2016 and the 17th day of February, 2016, the claimant's decedent, INDIA T. CUMMINGS, while under the care, custody and control of ERIE COUNTY, ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY SHERIFF TIMOTHY B. HOWARD, CITY OF LACKAWANNA and/or the CITY

OF LACKAWANNA POLICE DEPARTMENT, did suffer from medical conditions which were not properly diagnosed, cared for, or treated, and which ultimately led to her death on the 21st day of February, 2016.

7. 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, intentional and/or unlawful conduct on the part of the agents, servants and/or employees of ERIE COUNTY and/or ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY SHERIFF TIMOTHY B. HOWARD, and/or CITY OF LACKAWANNA and/or CITY OF LACKAWANNA POLICE DEPARTMENT, and more particularly, among other things, to failing and omitting to appropriately supervise and observe claimant's decedent while she was incarcerated; in unlawfully and negligently endangering the welfare of the decedent; in violating due process of claimant's decedent; in failing and omitting to have and provide personnel and/or police officers with sufficient experience to handle similar circumstances; in allowing and permitting its personnel and/or police officers to cause injury to the decedent and in failing and omitting to provide the proper and necessary medical care to the decedent.

8. Upon information and belief, as a result of the aforesaid incident, the claimant's decedent, INDIA T. CUMMINGS, sustained pain and suffering and severe bodily injuries which ultimately led to her death.

9. As a result of the aforesaid incident and injuries and wrongful death of the decedent, INDIA T. CUMMINGS, the claimant, TAWANA R. WYATT, as Administratrix of

the Estate of INDIA T. CUMMINGS, claims damages on behalf of the decedent's distributees.

WHEREFORE, claimant requests that ERIE COUNTY, ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY SHERIFF TIMOTHY B. HOWARD, CITY OF LACKAWANNA and CITY OF LACKAWANNA POLICE DEPARTMENT honor and pay the claim on behalf of TAWANA R. WYATT, as Administratrix of the Estate of INDIA T. CUMMINGS, deceased.

DATED: Buffalo, New York
July 21, 2016

TAWANA R. WYATT, as Administratrix of the Estate of INDIA T. CUMMINGS

VANDETTE PENBERTHY LLP

By: JAMES M. VANDETTE, ESQ.
Attorneys for Claimant
Office and P.O. Address
617 Main Street, Suite 203
Buffalo, New York 14203
(716) 803-8400

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

TAWANA R. WYATT, as Administratrix of the Estate of INDIA T. CUMMINGS, 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.

TAWANA R. WYATT, as Administratrix
of the Estate of INDIA T. CUMMINGS

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

Notary Public

James M. VanDette
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires 3/16/17

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 27, 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:	*Schaffer, Natalie A. v. Erie County Board of Elections, et al. - Independence Party designating petitions*
Document Received:	Order to Show Cause
Name of Claimant:	Natalie A. Schaffer 35 Redbrick Road Orchard Park, New York 14127
Claimant's attorney:	Michael J. Keane, Esq. Colucci & Gallaher, P.C. 2000 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.

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 27th day of July 2016.

HON. Deborah Chimera J.S.C.
PRESIDING JUSTICE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of
NATALIE A. SCHAFFER
35 Redbrick Road
Orchard Park, NY 14127

Petitioner

vs

JOSEPH D. GREENAN
250 Summit Avenue
West Seneca, NY 14224

SUSAN M. BREM
82 Marlow Road
West Seneca, NY 14224

JULIE A. GREENAN
250 Summit Avenue
West Seneca, NY 14224

MAGHAN E. PRIM
3104 South Park Avenue, Unit 2
Lackawanna, NY 14218

Respondents-Candidates

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

Respondent,

ORDER TO SHOW CAUSE

INDEX NO.

I 2016-

07/27/2016 11:25:23
ERIE COUNTY CLERK
RCPT # 16122601
I 2016000107

ERIE BD BOE JUL 27 '16 PM 1:46

For an Order and Judgment pursuant to New York Election Law Articles 6 and 16 invalidating Respondent-Candidates Independence Party Designating Petition for the public office of Delegate and Alternate Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd Assembly District of the State of New York, filed with the Erie County Board of Elections on July 11, 2016 and removing their names from the Ballot for the September 13, 2016 Primary Election.

TO THE NEW YORK STATE SUPREME COURT – ERIE COUNTY

Upon the Verified Petition of the Petitioner Natalie A. Schaffer, dated the 26th 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** 33, on the 8th day of August, 2016 at 3:00 o'clock in the ~~a.m.~~ p.m. of that day, or as soon thereafter as counsel can be heard,

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, 16-154, 16-100, and 16-102, **granting the following relief against the Respondents:**

1. An Order, pursuant to Election Law Articles 6 and 16, invalidating the Independence Party petition of Respondents-Candidates Joseph D. Greenan, Susan M. Brem, Julie A. Greenan and Maghan E. Prim, to be candidates for the public office of Delegate and Alternate Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, by reason of the fact that said petition contains less than the minimum of 218 valid signatures, as required by Election Law Section 6-136(2), in order for a person's name to appear on the ballot on the Independence Party line for the public office of Delegate and Alternate Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, in Erie County, New York;

250 Summit Avenue, West Seneca, NY 14224, the address listed by him on his petition to be an Independence Party candidate for the public office of Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

2. Respondent-Candidate **SUSAN M. BREM**:

By delivery to **Susan M. Brem** in any manner authorized by CPLR Section 308 or by overnight delivery service (as defined by CPLR § 2103(b)(6)) to her at 82 Marlow Road, West Seneca, NY 14224, the address listed by her on her petition to be a candidate for Independence Party candidate for the public office of Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

3. Respondent-Candidate **JULIE A. GREENAN**:

By delivery to **Julie A. Greenan** in any manner authorized by CPLR Section 308 or by overnight delivery service (as defined by CPLR § 2103(b)(6)) to her at 250 Summit Avenue, West Seneca, NY 14224, the address listed by her petition to be a candidate for Independence Party candidate for the public office of Alternate Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

4. Respondent-Candidate **MAGHAN E. PRIM**:

By delivery to **Meghan E. Prim** in any manner authorized by CPLR Section 308 or by overnight delivery service (as defined by CPLR § 2103(b)(6)) to her at 3104 South Park Avenue, Unit 2, Lackawanna, NY 14218 the address listed by her on her petition to be a candidate for the public office of Alternate Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

5. 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 Independence Party petition of Respondents-Candidates Joseph D. Greenan, Susan M. Brem, Julie A. Greenan and Maghan E. Prim, candidates for the public offices of Delegate and Alternate Delegate to the Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, the original Independence Party petition of Natalie A. Schaffer, Karen L. O'Brien, Sean M. Wittmann, and Jennifer L. Cappelli, candidates for the public offices of Delegate and Alternate Delegate to the

Judicial Convention of the 8th Judicial District, from the 142nd New York State Assembly District of the State of New York, the original GENERAL and SPECIFIC OBJECTIONS to the Respondents-Candidates petition filed by Petitioner-Objector Natalie A. Schaffer 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-Candidates and the Erie County Board of Elections' 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 Petitioner' counsel, no later than ~~time~~ 5:00 ~~a.m.~~ / p.m. the 4th day of ~~July~~ July ~~2016~~; and it is further

ORDERED, that the Respondents shall also deliver, in addition to the paper copy of the documents referred to above, an electronic copy of their verified answers and affidavits or other responding papers, including motion papers, to the Petitioner's counsel at mkeane@colucci-gallaher.com as early as feasibly possible prior to service and filing of the original paper originals of said documents; 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.

Paula A. Feroleto i/a/o Deborah Chimes

Justice of the Supreme Court
County of Erie

GRANTED: July __, 2016

Court Clerk

GRANTED

JUL 27 2016

BY K. M. Kelley

KEVIN M. KELLEY
DEPUTY CHIEF CLERK