

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH,
SECOND ASSISTANT COUNTY ATTORNEY

MEMORANDUM

TO: Karen McCarthy, Clerk, Erie County Legislature
FROM: Michelle M. Parker, First Assistant County Attorney
DATE: February 18, 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 15 new claims brought against the County of Erie. The claims are as follows:

Claim Name

- Christina Scanio v. ECSO
- Patricia Jones v. COE
- Richard Neff v. COE, et al.
- Reid, Palmeri and Ricotta v. COE
- Gary Lukasik v. COE, et al.
- Michael Borders el Bey v. ECDOMH
- Government Payment Services v. ECSO, et al.
- Susan Kelleher v. COE, et al.
- Richard Santino v. COE
- Jodi Burvid v. COE, et al.
- Kimberly Cedeno v. COE
- Eric & Michelle Lahrs v. COE, et al.
- Steven Miska v. COE, et al.
- Melinda Bryant v. COE
- Erie County Sheriff's PBA v. COE, et al.

MMP:dld
Attachments

Comm. 5D-7



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

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COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

December 11, 2015

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

Dear Ms. McCarthy:

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

File Name:	<i>Scanio, Christina v. Erie County Sheriff's Office</i>
Document Received:	NYS Division of Human Rights Complaint
Name of Claimant:	Christine Scanio 4786 Mosey Lane Blasdell, NY 14219
Claimant's attorney:	Claimant is proceeding <i>pro se</i>

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP:dld
Enc.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

CHRISTINA SCANIO,

Complainant,

v.

ERIE COUNTY, SHERIFF'S OFFICE,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.

10178874

Federal Charge No. 16GB600814

I, Christina Scanio, residing at 4786 Mosey Lane, Blasdell, NY, 14219, 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 disability, sex, opposed discrimination/retaliation.

Date most recent or continuing discrimination took place is 10/7/2015.

See attached complaint.



New York State Division of Human Rights
Complaint Form

RECEIVED

DEC 08 2015

NYSDIHR BUFFALO
REGIONAL OFFICE

CONTACT INFORMATION

My contact information:

Name: Christina Scanio

Address: 4786 Mosey Lane Apt or Floor #: _____

City: Blasdell State: NY Zip: 14219

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
- Labor Union, Employment Agencies
- Commercial Space

I am filing a complaint against:

Company or Other Name: Erie County Sheriff's Department

Address: 10 Delaware Avenue

City: Buffalo State: NY Zip: 14202

Telephone Number: 716 858 7618
(area code)

Individual people who discriminated against me:

Name: Timothy Howard

Name: David Franckowiak

Title: Sheriff

Title: Sergeant

DATE OF DISCRIMINATION

The most recent act of discrimination happened on: 10 month 7 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:

<input type="checkbox"/> Age <i>(Does not apply to Public Accommodations)</i> Date of Birth:	<input type="checkbox"/> Genetic Predisposition <i>(Employment only)</i> Please specify:
<input type="checkbox"/> Arrest Record <i>(Only for Employment, Licensing, and Credit)</i> Please specify:	<input type="checkbox"/> Marital Status Please specify:
<input type="checkbox"/> Conviction Record <i>(Employment and Credit only)</i> Please specify:	<input type="checkbox"/> Military Status: Please specify:
<input type="checkbox"/> Creed / Religion Please specify:	<input type="checkbox"/> National Origin Please specify:
<input checked="" type="checkbox"/> Disability Please specify: Pregnancy	<input type="checkbox"/> Race/Color or Ethnicity Please specify:
<input type="checkbox"/> Domestic Violence Victim Status: <i>(Employment only)</i> Please specify:	<input checked="" type="checkbox"/> Sex Please specify: <input checked="" type="checkbox"/> Female <input type="checkbox"/> Male <input checked="" type="checkbox"/> Pregnancy <input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> Familial Status <i>(Housing and Credit only)</i> Please specify:	<input type="checkbox"/> Sexual Orientation Please specify:
<input checked="" type="checkbox"/> Retaliation <i>(if you filed a discrimination case before, or helped someone else with a discrimination case, or reported discrimination due to race, sex, or any other category listed above)</i> Please specify: Previous reports of discrimination, and protected activity making accommodation requests.	



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.

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 complaint narrative.

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.**

CHRISTINA SCANIO v. ERIE COUNTY SHERIFF'S DEPARTMENT

I, Christina Scanio, residing at 4786 Mosey Lane, Blasdell, NY 14219, charge Erie County Sheriff's Department, whose address is 10 Delaware Ave, Buffalo, NY 14202, with an unlawful discriminatory practice relating to employment on the basis of disability (pregnancy), sex/gender, and opposed discrimination/retaliation in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law), §296(a)(1), Title VII of the Civil Rights Act of 1964, as amended, and The Americans with Disabilities Act, as amended.

The allegations are:

PROTECTED CLASS: Disability (Pregnancy), Sex/Gender, Retaliation

Background Information and Protected Classes/Activity

1. I am female.
2. I have a temporary disability as defined under the relevant statutes that arose after I became pregnant in April 2015.
3. I was hired by Respondent Erie County Sheriff's Department ("Respondent" or "the County") in April 2009 and hold the position of Deputy Sheriff. I am qualified for my job.
4. In April 2015, I became pregnant. In June 2015, I became visibly pregnant, and disclosed my pregnancy to my employer.
5. Following my disclosure of my pregnancy, my immediate supervisor, Sergeant David Franckowiak, began harassing me on the basis of my pregnancy. Sergeant Franckowiak immediately began subjecting me to increased scrutiny at work, and engaged in other behaviors designed to threaten, intimidate and force me out of my job.
6. I complained about Sergeant Franckowiak's harassing conduct in a memorandum to Captain Jeffrey Hartman on July 3, 2015 and July 7, 2015. I also complained to the Erie County Division of Equal Employment Opportunity. I informed both institutions that I believed Sergeant Franckowiak was discriminating and retaliating against me on the basis of my pregnancy.
7. On July 24, 2015, I received a letter from Captain Hartman stating that his office completed its investigation into my July complaints against Sergeant Franckowiak and found no policy violation occurred.

8. On August 26, 2015, I received my Notice of Right to File a Formal Complaint from the Erie County Division of Equal Employment Opportunity. I did not pursue a formal complaint filing on the basis of my July 2015 complaints following my receipt of the County's letter.
9. On October 5, 2015, I submitted another complaint to Captain Hartman and the Erie County Division of Equal Employment Opportunity regarding another incident with Sergeant Franckowiak that arose in July, but which I learned about thereafter.
10. In that incident, I learned Sergeant Franckowiak had asked Deputy Wayne Cashion to falsely write a disciplinary "pink sheet" and state that my behavior before going home on July 1, 2015 was irrational and insubordinate. Deputy Cashion informed Sergeant Franckowiak that he would not write the pink sheet as requested because I did not act irrational or insubordinate at any time.
11. As such, I believed the incident to be retaliatory on the basis of my pregnancy. Sergeant Franckowiak's actions caused me great stress during my pregnancy, which I reported to my primary physician and OB/GYN.
12. On November 5, 2015, I attended an initial counseling session at the Erie County Division of Equal Employment Opportunity with my attorney, Lindy Korn. I was counseled by the County on the expected timeline of my October 5th complaint and notified of my rights in the process.
13. On December 1, 2015, before pursuing a formal complaint with the County, I, through counsel, submitted a letter withdrawing my October 5th complaint, and indicating that I would be pursuing my rights through the New York State Division of Human Rights.
14. I then filed the instant complaint.

Actionable Events

15. As a result of Sergeant Franckowiak's discriminatory and harassing conduct in June 2015, I began experiencing tremendous anxiety and panic attacks.
16. As a result of the ongoing stress and its impact on my pregnancy, my physician took me out of work in July 2015.
17. On August 12, 2015, I called the Erie County Office for the Disabled to request light duty accommodations so I could return to work. As a follow-up, the County Office for the Disabled sent me a written request for medical documentation, which would assist in

“making a determination concerning your request for a reasonable accommodation under the Americans with Disabilities Act (ADA) or New York Human Rights Law.”

18. On August 14, 2015, my physician, Dr. Jeffrey Constantine of OB/GYN Associates of WNY, completed the County’s “physician medical certification for request for reasonable accommodation.”
19. On this form, Dr. Constantine noted my medical condition of intrauterine pregnancy. Dr. Constantine stated that my condition arose from a physical impairment of history of pre-term labor, and that my condition arose from a mental impairment of anxiety and panic attacks. Dr. Constantine further indicated that I was receiving treatment of Makena injections to help prevent pre-term labor. Makena injections are a prescription hormone medicine (progestin) used to lower the risk of pre-term birth in women who are at risk for pre-term labor.
20. Dr. Constantine noted that he had been treating me for these symptoms since 6/15/15, and identified my work-related symptoms as being anxiety and panic attacks with daily frequency and duration “on and off throughout the day.”
21. On the form, Dr. Constantine stated that I can work an eight hour day and noted that “Patient **IS** currently limited in his/her ability to perform job duties.” Dr. Constantine checked off my physical capabilities of sitting, standing, walking, driving for eight hours, in addition to “fine manipulation” and “simple grasp” for eight hours.
22. Dr. Constantine indicated that I could NOT engage in the following: stooping, climbing, crouching, kneeling, pulling, pushing, reaching overhead, reaching below waist, and twisting. Dr. Constantine set my lifting capabilities as “Not greater than 25 lbs.” and my carrying capabilities as “Not greater than 25 lbs.”
23. Dr. Constantine further indicated that my condition required moderate bedrest, that I was able to perform the above checked tasks on a rotational basis, and that my accommodation would be needed until delivery, with accommodation reassessment post-partum.
24. Dr. Constantine had full knowledge of my job duties before and during his completion of the Request for Reasonable Accommodation form as the County attached a “Typical Work Activities” form for my position of Deputy-Sheriff Officer to the request form.
25. On August 17, 2015, I completed and submitted a medical authorization form, which permitted Erie County Office for the Disabled to access my medical records from my OB/GYN.

26. On August 26, 2015, the Erie County Office for the Disabled issued a letter stating it was in receipt of the medical documentation from my physician regarding my request for a reasonable accommodation under the Americans with Disabilities Act (ADA) and New York Human Rights Law.
27. The letter went on to state that, based on this information and correspondence with my department, "it has been determined that there is no light duty job available in your department at this time."
28. The Erie County Office for the Disabled issued its letter denying me a reasonable accommodation on the same day the County EEO Office issued its letter addressing my July complaints against Sergeant Franckowiak. Upon information and belief, Sergeant Franckowiak was involved in the County's decision to deny my reasonable accommodation request.
29. During a meeting with Sheriff Timothy Howard in October 2015, I again addressed the reasonable accommodation issue.
30. In response to my request for reasonable accommodation, Sheriff Howard told me that light duty accommodations were only for people injured at work. However, I knew this was incorrect. Respondent previously accommodated female officer Louann Stevens when she was pregnant with twins. I was aware that Deputy Stevens was assigned light duty work with no inmate contact per her request.
31. Upon information and belief, Officer Stevens had not engaged in the same protected activity as I (i.e., filing EEO complaints against her supervisor) before requesting her reasonable accommodation.
32. Further, Respondent has routinely granted accommodation requests to male employees and has provided male employees with light duty work when the male employee was not hurt on the job.
33. For example, in/around May 2014, Respondent accommodated a male employee, Deputy Hussar, who injured himself in a softball game. Deputy Hussar suffered a knee injury during the game and was accommodated with a light duty assignment that involved no inmate contact working in Respondent's administrative offices.
34. Approximately two weeks before I applied for light duty, Respondent granted the light duty request of a male officer, Kyle Filipski. The County Administrative Offices found

that Deputy Filipski injured himself outside of work, yet Respondent still provided him a light duty position.

35. Further, on October 14, 2015, male deputy Daniel Hornburger was accommodated with light duty, stationed in a ground floor room adjacent to an inmate x-ray room with the door locked. Like me, Deputy Hornburger had doctor's orders indicating no inmate contact. In his case, however, Respondent actually accommodated Deputy Hornburger with his requested accommodation.
36. Similarly, Respondent granted a no-inmate accommodation for another male officer, Charles Hewitt in 2015 as well.
37. In November 2015, Respondent also granted a workplace accommodation to male Deputy Brian Kelly. Deputy Kelly regularly works the midnight shift and received a light duty accommodation in relation to a genetic degenerative back problem. In response to Deputy Kelly's accommodation request, Respondent trained Deputy Kelly for approximately one week on the day shift and then assigned him to perform office work on his regular shift, either typing or scanning paperwork. Deputy Kelly's assignment also involved no inmate contact.
38. Upon information and belief, Respondent provided Deputy Sheriff Matthew Smith with a light duty accommodation despite the fact that Deputy Smith's LDI ("line of duty injury") paperwork was denied, meaning that Respondent did not consider Deputy Smith's injury as occurring at work, and yet it still provided him with light duty.
39. In response to my accommodation request, however, Respondent denied me similar light duty assignments. First, Sheriff Howard suggested changing my shift to midnights. I regularly worked the 7AM-3PM shift, and this shift change would have drastically affected my life and negatively affected my pregnancy.
40. When I told this to Sheriff Howard, he then stated that I could return to work full-duty working with inmates. However, my doctor advised that I should not work directly with inmates while I was pregnant.
41. Sheriff Howard then suggested that I work at the Alden Correctional Facility lobby, which would involve remaining at a front lobby post and working with the public. Because of my pregnancy, I also needed more frequent bathroom breaks, which would have impacted my ability to remain at my post for long periods of time. When I told Sheriff Howard this, he suggested that I get a portable toilet for my work station. This did not appear to be a serious or reasonable suggestion since it would not provide me any privacy and would be directly in a public area.

42. Sheriff Howard then asked what my restrictions were and I informed him that my doctor recommended duties such as scanning paperwork or performing other tasks associated with the desk work typically offered to light duty employees.
43. I told Sheriff Howard that I remained ready, willing, and able to work, with the appropriate accommodation—essentially that I could not work “full duty” on line with inmates or in contact with inmates. Nevertheless, Respondent refused to grant me a reasonable accommodation to allow me to work, despite the fact that it granted this same accommodation to other employees.
44. Instead, Sheriff Howard suggested that I apply for Social Security Disability benefits.
45. Respondent has retaliated against me in other ways too in the aftermath of my complaints against Sergeant Franckowiak. When I first began my leave in June 2015, Respondent told me that I would need to stay in my house during work hours. Respondent further told me that I needed to call the Sheriff’s Department if I needed to leave my house for any reason, including doctor’s appointments.
46. Since I was on unpaid leave, I did not understand Respondent’s policy, which was essentially the equivalent of house arrest. Additionally, I knew that Respondent did not require the same of other employees on unpaid leave. As a result, I believed Respondent was exacting this policy against me in retaliation for my accommodation requests with the intention to make life even more difficult for me.
47. When I informed Respondent that I obtained legal counsel, Respondent told me I no longer had to call during the day to leave my house.
48. I currently remain on leave without pay. Because of Respondent’s refusal to grant my reasonable accommodation request, I have been unable to return to work. Further, because Respondent’s conduct has prevented me from returning to work, I have significantly lost out on hours worked this year and as such will not qualify for FMLA when my baby is born in January 2016.
49. Respondent has also failed to provide adequate accommodations for lactating employees. On October 7, 2015, a dozen of Respondent’s female employees, including myself, attended a meeting to address issues related to pumping in the workplace and Respondent’s denial of light duty to pregnant employees.
50. Respondent does not have a designated room for lactating mothers to pump during the workday. Instead, Respondent has told female employees to express breast milk in the

female locker room, which is not private and is accessible to all female employees throughout the work day.

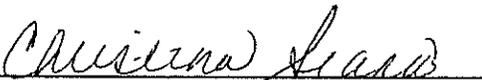
51. Respondent has also recommended that lactating employees express breast milk at a separate building, several blocks away from the Sheriff's Department. This obviously poses issues for employees during bad weather, but even on the best of days, traveling to another building also causes time limitations, for already time-pressed employees who are struggling to factor pumping into their work schedule. Additionally, this building is not open after hours, which poses problems for female officers who work in the evenings or overnight.
52. When I told Respondent that I would need appropriate accommodations for expressing breast milk after my baby is born, a male officer joked that I could use his office to express breast milk.
53. Since that meeting, Respondent has not provided the legally mandated accommodations for lactating employees, nor has Respondent provided me with light duty for my pregnancy in accordance with the law.

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

I also charge the above-named respondent with violating Title VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act, as amended.

I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

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


Christina Scanio

STATE OF NEW YORK)
COUNTY OF Erie) SS:

Christina Scanio, being duly sworn, deposes and says: that she is the complainant herein; that she has read (or had read to her) the foregoing complaint and knows the content thereof; that the

same is true of her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, she believes the same to be true.

Christina M Scanio
Christina Scanio

Sworn to before me this

7th day of December, 2015

[Signature]

Notary Public, State of New York
Qualified in Erie County

CANDACE R. ALNAJI
Notary Public, State of New York
Registration #02AL6300345
Qualified in Erie County
Commission Expires March 31, 2018

My Commission Expires 3/31/18

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 in the 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.

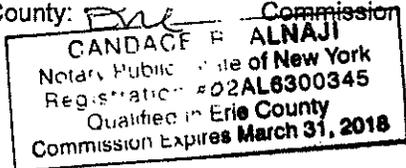
I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

CHRISTINA M. SEARD
Sign your full legal name

Subscribed and sworn before me
This 7th day of December, 2015

Candace E. Alnaji
Signature of Notary Public

County: Erie Commission expires: 3/31/18



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.



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 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:	<i>Jones, Patricia L. v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Patricia L. Jones 6654 Hamilton Drive Derby, New York 14047
Claimant's attorney:	Tiffany M. Kopacz, 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.

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

In the Matter of the Claim of:

PATRICIA L. JONES
6654 Hamilton Drive
Derby, New York 14047

Claimant,

v.

NOTICE OF CLAIM

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

Respondent.

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

PLEASE TAKE NOTICE, that PATRICIA L. JONES hereby claims damages against COUNTY OF ERIE, its officers, agents and/or employees, for damages incurred as a result of the wrongful, negligent and careless acts of the respondent, its officers, agents and/or employees on or about September 11, 2015, and in support thereof submits the following:

1. The claimant is PATRICIA L. JONES, whose post office address is 6654 Hamilton Drive, Derby, New York 14047 and telephone number (315) 777-1664.
2. The name of the attorney for the claimant is CHIACCHIA & FLEMING, LLP, Tiffany M. Kopacz, Esq., of counsel, whose post office address is 5113 South Park Avenue, Hamburg, New York, 14075, telephone number (716) 648-3030.

3. Upon information and belief on or about September 11, 2015, PATRICIA L. JONES suffered grievous bodily injury while walking on the sidewalk along 2 Mile Creek Road in the Town of Tonawanda, County of Erie, State of New York, when she fell on a dangerous, uneven, unsafe and defective sidewalk located directly in front of 280 2 Mile Creek Road. Attached hereto as EXHIBIT A are photographs of the subject sidewalk.

4. To the extent that the aforesaid sidewalk traverses a County-owned road, the Respondent, its officers, agents and/or employees, were negligent, careless and/or reckless as follows: in failing to maintain the public sidewalks and areas appurtenant thereto in a reasonably safe condition and free of unreasonably hazardous conditions on the referenced public sidewalk; in failing to correct the defective conditions of the sidewalks following receipt of written and other notice advising same; in maintaining and/or allowing the sidewalk to be in disrepair or defective, thereby creating and maintaining a dangerous and hazardous condition to exist; in failing to warn, by sign or other readily visible markings, those lawfully walking on the public sidewalk of such dangerous and hazardous condition, despite having notice of such foreseeable harm; in failing to properly inspect the sidewalk for defects; in failing to take reasonable precautions to protect those lawfully walking on the public sidewalk, specifically PATRICIA L. JONES, and prevent such occurrence; in unnecessarily exposing individuals to the harm and the very occurrence complained of by the claimant; in causing, creating and maintaining a dangerous and hazardous situation; in hiring and/or retaining inexperienced and/or improper personnel to repair and/or correct the subject sidewalk; in failing to adequately supervise personnel charged with repairing and/or correcting the subject sidewalk; in failing to ensure the subject sidewalk was repaired and/or corrected in a proper and safe manner; and, otherwise acting in a negligent manner.

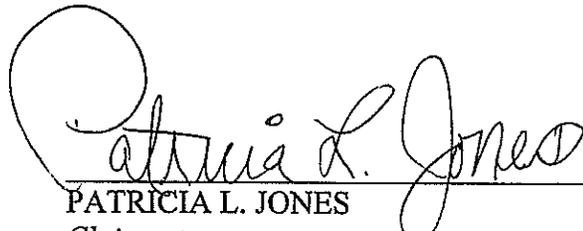
5. As a result of the negligence of the Respondent, claimant PATRICIA L. JONES, sustained severe bodily injuries to her shoulder, arm, neck, knee, and right side.

6. That as a result of the injuries sustained by PATRICIA L. JONES, damages have been incurred in an amount to be determined after trial and/or after further analysis of the physical injuries and the costs of treating same.

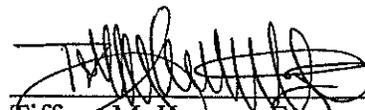
7. This notice is made and served on behalf of said claimant in compliance with the provisions of Section 50-e of New York State General Municipal Law and such other laws and statutes as are in the case made and provided.

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 COUNTY OF ERIE.

Dated: October 21, 2015
Hamburg, New York



PATRICIA L. JONES
Claimant



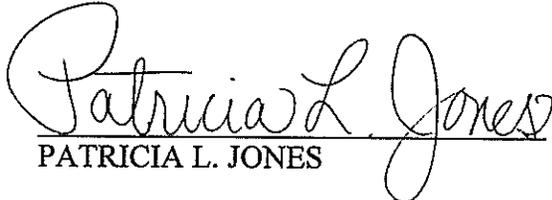
Tiffany M. Kopacz, Esq.
CHIACCHIA & FLEMING, LLP
Attorneys for Claimant
5113 South Park Avenue
Hamburg, New York 14075
Telephone: (716) 648-30

VERIFICATION

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

PATRICIA L. JONES, 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.



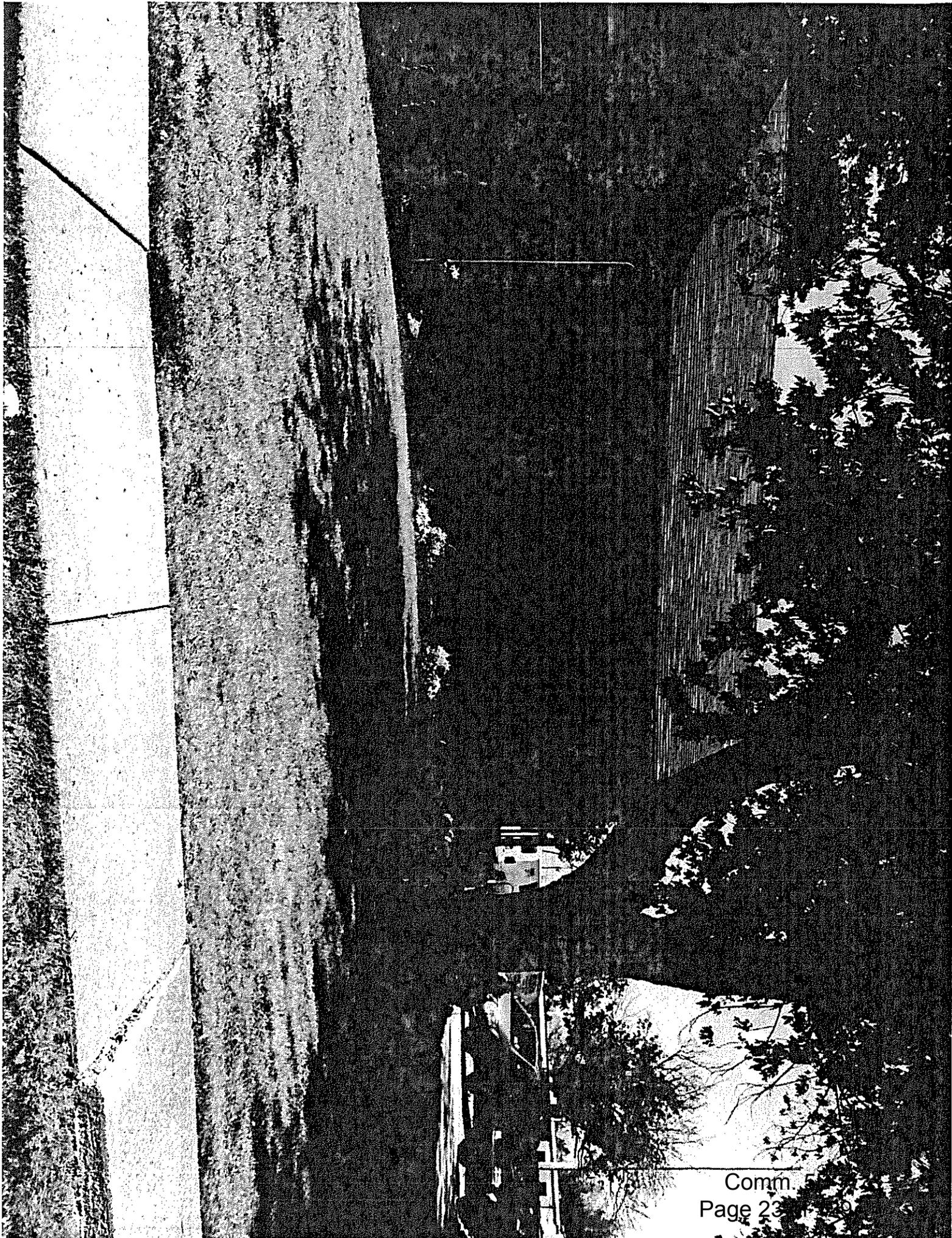
PATRICIA L. JONES

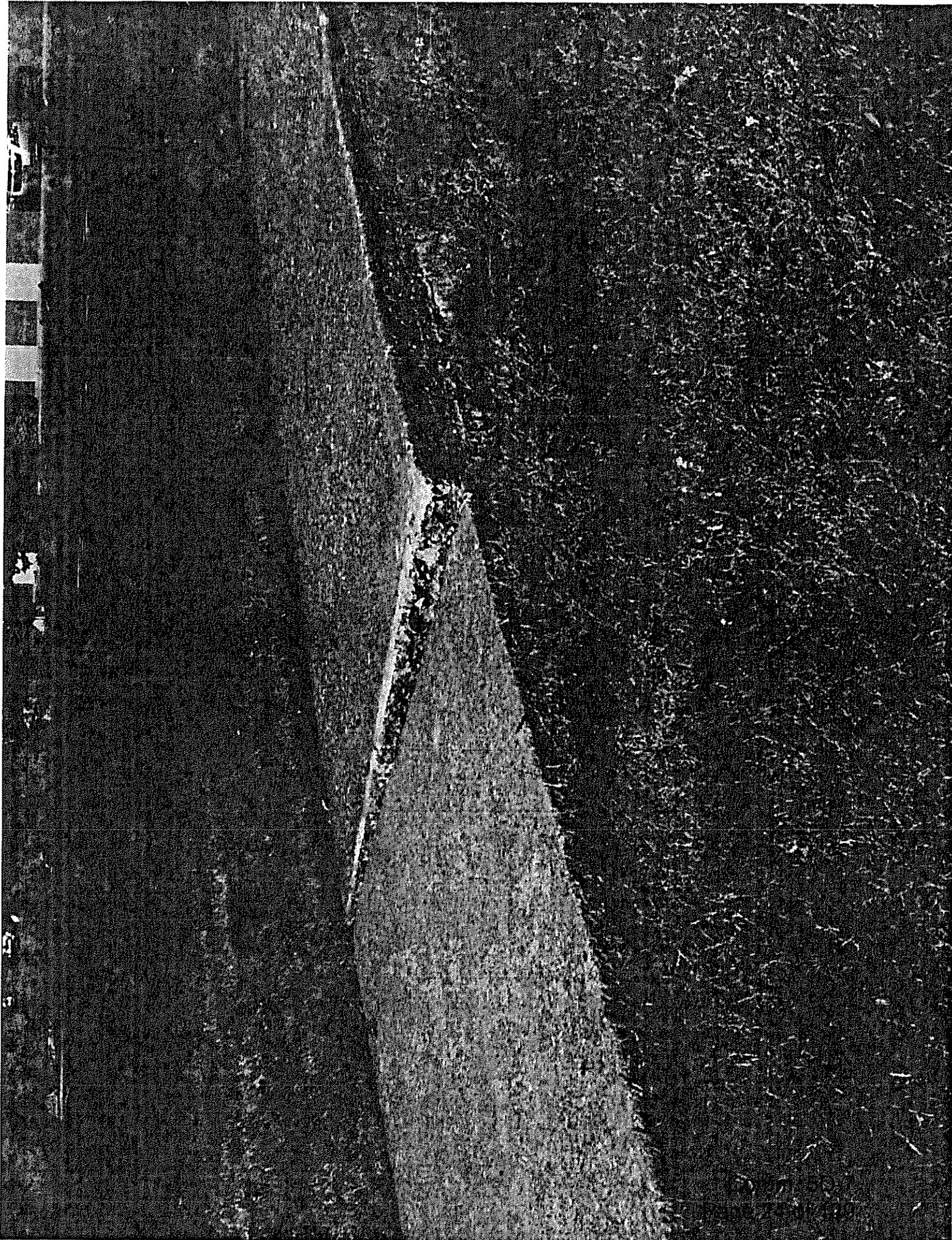
Sworn to before me this
21st day of October, 2015

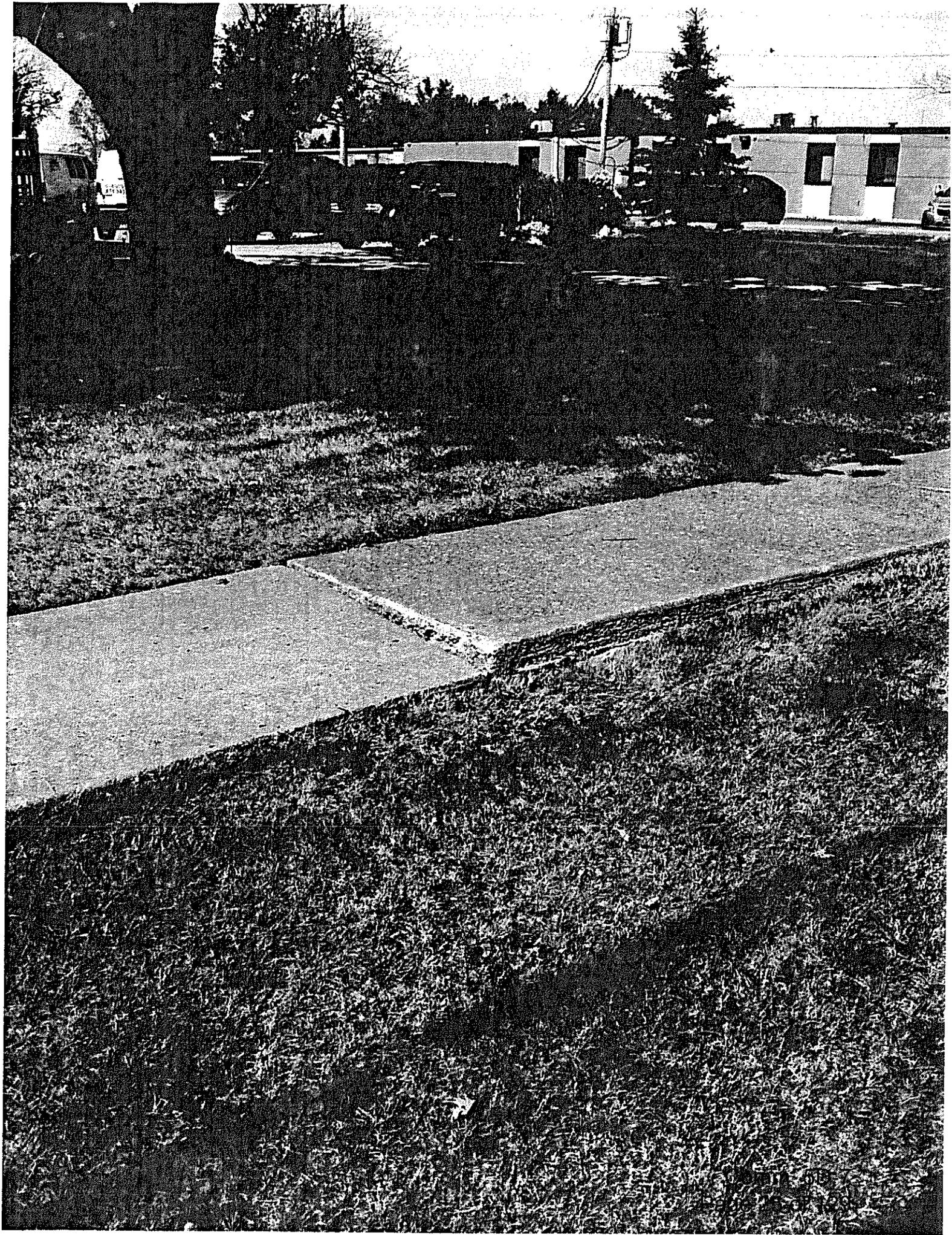


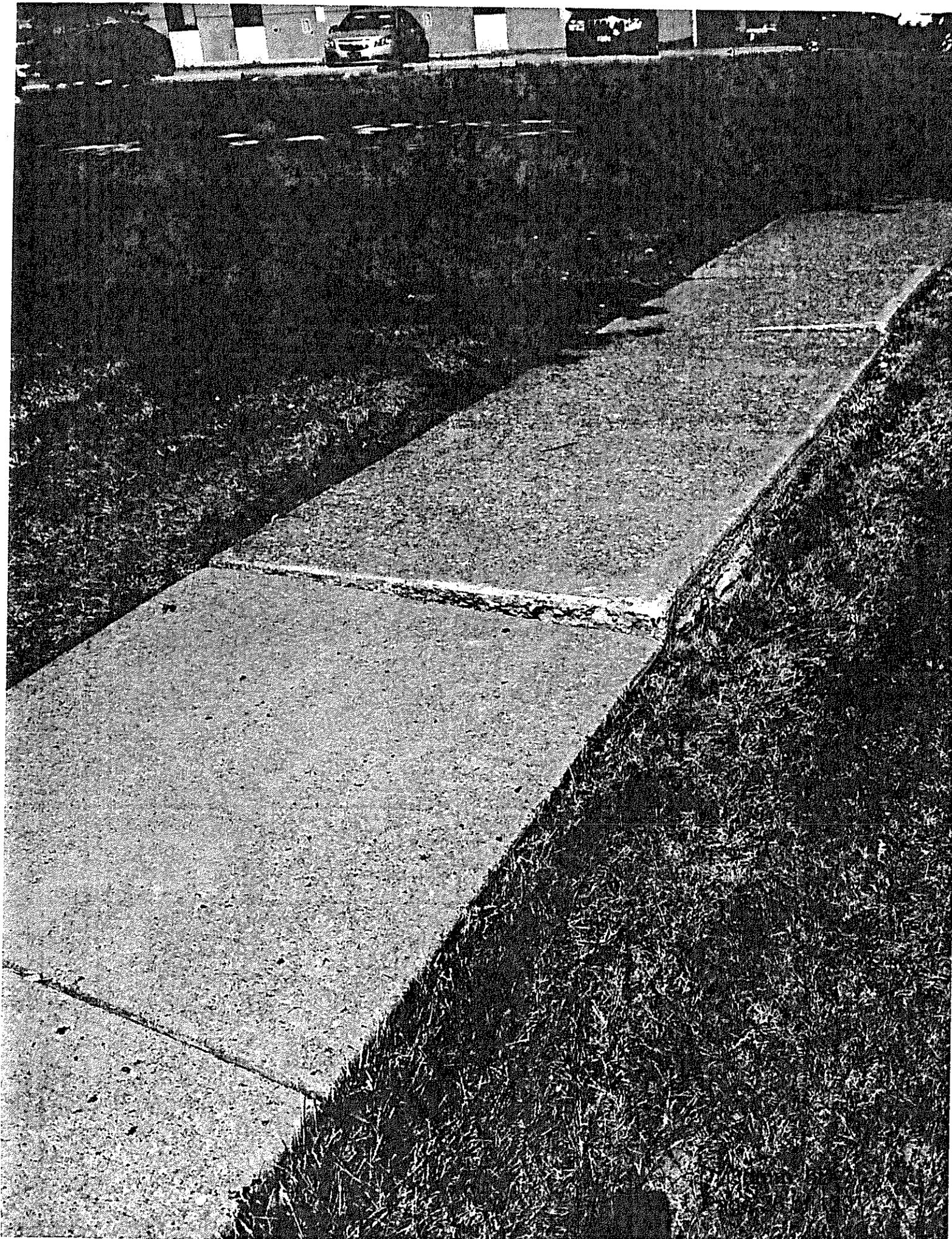
Notary Public
TIFFANY M. KOPACZ
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 27, 2015

EXHIBIT A











COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 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:	<i>Neff, Richard D. v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Richard D. Neff 10945 Olean Road Sardina, NY 14030
Claimant's attorney:	Sabatino C. Santarpia, Esq. Santarpia Law 568 Lafayette Avenue Buffalo, New York 14222

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 Sabatino Santarpia
the 18 day of December 15
at 3:31 a.m./p.m.
Kelly Brunkworth
Assistant County Attorney

STATE OF NEW YORK

In the Matter of the Claim of

RICHARD D. NEFF

Claimant,

NOTICE OF CLAIM

-vs-

COUNTY OF ERIE, NEW YORK
ERIE COUTY SHERIFF'S DEPARTMENT
DEPUTY SHERIFF BRADFORD G. BALLANTYNE
DEPUTY SHERIFF JOHN DOE 1-10
DEPUTY SHERIFF JANE DOE said names being
fictitious, but intended to be the arresting/participating
officers in the incident herein

Respondents.

TO: COUNTY OF ERIE, NEW YORK
ERIE COUTY SHERIFF'S DEPARTMENT
DEPUTY SHERIFF BRADFORD G. BALLANTYNE

SIRS:

PLEASE TAKE NOTICE that the Claimant herein hereby makes claim against COUNTY OF ERIE, ERIE COUTY SHERIFF'S DEPARTMENT, DEPUTY and DEPUTY SHERIFF BRADFORD G. BALLANTYNE for personal injuries and/or other damages generally sustained on account of the intended acts of its agents and/or employees of assault, harassment, battery, false arrest, excessive force, unlawful imprisonment, malicious prosecution, slander, libel and violations of the unlawful Federal Civil Rights Law, and in support thereof, pursuant to General Municipal Law §50-c, Claimant states as follows:

SANTARPIA LAW
568 Lafayette Avenue Buffalo, NY 14222
(716) 885-8855 Telephone * (716) 885-0208 Telecopier

1. Address of Claimant:
10945 Olean Road
Sardina, NY 14030

2. Attorneys for Claimant
SANTARPIA LAW
Sabatino C. Santarpia, Esq.
568 Lafayette Avenue
Buffalo, NY 14222
(716) 885-8855
Fax (716) 885-0208
sab@santarpialaw.com

1. This claim is for personal injuries and other damages sustained by Claimant as a result of the intentional acts of assault, battery, harassment, false arrest, excessive force, unlawful imprisonment, malicious prosecution, slander, libel and violations of the Federal Civil Rights Law as hereinafter set forth.

2. The claim arose on June 13, 2014 at 10945 Olean Road Sardina when COUNTY OF ERIE, ERIE COUNTY SHERIFF'S DEPARTMENT, through its agents and/or employees including DEPUTY SHERIFF BRADFORD G. BALLANTYNE, arrested and commenced and filed an action against the Claimant under CD#: 14-040002 resulting in the arrest and prosecution of Claimant; and the matter having been disposed of in favor of the Claimant on 10/27/2015;

3. The particular place of the commencement of the sustaining of the injuries

SANTARPIA LAW
568 Lafayette Avenue Buffalo, NY 14222
(716) 885-8855 Telephone * (716) 885-0208 Telecopier

resulting in these claims was outside behind the Claimant's place of business located at 10945 Olean Road Sardinia, NY 14030, the Sheriff's department booking center and the Town of Sardinia and in and around the community wherein the Claimant is generally known.

4. Said police officers caused Claimant to be placed under arrest when no offense had been committed by him, caused him physical injury, imprisoned Claimant without cause and placed false and malicious criminal charges against him. The incident aforesaid and the injuries and resulting damages hereinafter alleged were caused, upon information and belief, solely and wholly by the intentional acts of DEPUTY SHERIFF BRADFORD G. BALLANTYNE, COUNTY OF ERIE AND ERIE COUNTY SHERIFF'S DEPARTMENT, their agents and/or employees, in that said police officer, agents and/or employees exercised their authority in an intentionally malicious and careless manner causing serious & permanent injuries and/or damages to Claimant.

5. Claimant solely by reason of intentional misconduct of agents and/or employees of COUNTY OF ERIE and ERIE COUNTY SHERIFF'S DEPARTMENT sustained permanent injuries, and/or damages, and as a result thereof, Claimant has been forced to expend sums of money for medical and legal assistance and/or was otherwise damaged.

WHEREFORE, Claimant requests that COUNTY OF ERIE and ERIE COUNTY

SANTARPIA LAW
568 Lafayette Avenue Buffalo, NY 14222
(716) 885-8855 Telephone * (716) 885-0208 Telecopier

SHEFRIFF'S DEPARTMENT honor and pay this claim.

DATED: December 1, 2015
Buffalo, New York

SANTARPIA LAW,



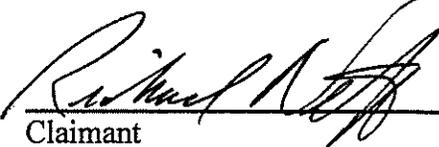
Sabatino C. Santarpia, Esq.
Attorneys for Claimant
568 Lafayette Avenue
Buffalo, New York 14222
(716) 885-8855 Telephone

SANTARPIA LAW
568 Lafayette Avenue Buffalo, NY 14222
(716) 885-8855 Telephone * (716) 885-0208 Telecopier

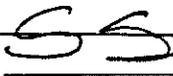
VERIFICATION

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

RICHARD D. NEFF being duly sworn, deposes and says that he is the Claimant in the within action; that he has read the foregoing Notice of Claim, 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 that as to those matters, deponent believes it to be true.


Claimant

Sworn to before me this
1st day of December, 2015.


Notary Public

SABATINO C. SANTARPIA, ESQ.
Notary Public, State of New York
Qualified in Erie County 1/14/15
My Commission Expires 1/14/15

SANTARPIA LAW
568 Lafayette Avenue Buffalo, NY 14222
(716) 885-8855 Telephone * (716) 885-0208 Telecopier



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 6, 2016

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

Dear Ms. McCarthy:

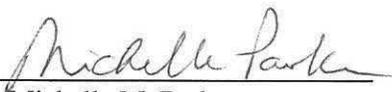
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>David Reid, Michael Palmeri and David Ricotta v. County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	David Reid Michael Palmeri David Ricotta
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 M. Parker
First Assistant County Attorney

MMP:dld
Enc.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

DAVID L. REID, MICHAEL PALMERI, and
DAVID RICOTTA

Plaintiff

v.

COUNTY OF ERIE

Defendant

Civil Action No. 1:15-CV-1078A

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) COUNTY OF ERIE
95 Franklin Street, 10th Floor
Buffalo, New York 14202

This paper received at the
Erie County Attorney's Office
from Doug DiFilippo on
the 30 day of Dec., 2015
at 12:15 am/p.m.

Kenneth R. Luby
Assistant County Attorney

A lawsuit has been filed against you.

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

Andrew P. Fleming, Esq.
CHIACCHIA & FLEMING, LLP
5113 South Park Avenue
Hamburg, New York 14075

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

Date: 12/30/15



CLERK OF COURT

Patrick J. Stahly

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID L. REID,
MICHAEL PALMERI, and
DAVID RICOTTA

COMPLAINT

Plaintiffs,

-against-

Civ. No: _____

COUNTY OF ERIE,

Defendant.

Plaintiffs DAVID L. REID, MICHAEL PALMERI, and DAVID RICOTTA, by their attorneys Chiacchia & Fleming, LLP, Andrew P. Fleming, Esq., of Counsel, as and for their Complaint against Defendant, hereby allege:

1. This is an action to redress unlawful employment practices, under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq. ("Title VII"), 42 U.S.C. § 1983, and the New York State Human Rights Law ("NYSHRL") N.Y. Exec. L. § 290 et seq.

2. Plaintiff DAVID L. REID is an African-American male employed by the defendant who was discriminated against by Defendant based on his race and retaliated against for exercising his rights under Title VII. Plaintiffs DAVID RICOTTA and MICHAEL PALMERI are also employed by the Defendant; they were retaliated against by Defendant for speaking up in support of Plaintiff Reid's claims of racial discrimination and for otherwise exercising their rights under Title VII in support of Plaintiff Reid.

3. Money damages, including lost wages and benefits, compensatory damages and other appropriate legal relief are sought pursuant to said statutes for each of the Plaintiffs.

THE PARTIES

4. At all times hereinafter mentioned, Plaintiff, DAVID L. REID (hereinafter “Plaintiff Reid”), was and continues to be a resident of the County of Erie and State of New York.

5. At all times hereinafter mentioned, Plaintiff, MICHAEL PALMERI (hereinafter “Plaintiff Palmeri”), was and continues to be a resident of the County of Erie and State of New York.

6. At all times hereinafter mentioned, Plaintiff, DAVID RICOTTA (hereinafter “Plaintiff Ricotta”), was and continues to be a resident of the County of Erie and State of New York.

7. At all times hereinafter mentioned, and upon information and belief, Defendant COUNTY OF ERIE, was and continues to be a municipal corporation duly existing under and by virtue of the laws of the State of New York.

JURISDICTION

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as plaintiffs allege that defendant violated rights guaranteed to them by the Constitution of the United States.

9. Supplemental jurisdiction over New York State Executive Law § 296 and other claims based upon New York State law are predicated upon 28 U.S.C. § 1367.

10. Venue is proper in the United States District of the Western District of New York pursuant to 28 U.S.C. § 1391(b), as the unlawful practices alleged were committed in this district.

11. Plaintiffs filed charges with the United States Equal Employment Opportunity Commission claiming discrimination on the basis of race and/or retaliation.

12. Plaintiffs received determination letters from the EEO Buffalo Office, finding discrimination and/or retaliation occurred towards each of the Plaintiffs herein.

13. Plaintiffs received "Right to Sue Letters" from the United States Department of Justice and have timely commenced this action within ninety (90) days of receipt thereof.

STATEMENT OF CLAIM

14. The claims hereinafter arise out of the same transaction, occurrence, or series of transactions and/or occurrences, as well as common issues of law and fact. Plaintiffs share a common interest in obtaining the same and/or similar relief.

As for Plaintiff Reid

15. Plaintiff Reid began working for Defendant in the Department of Public Works on or around September 24, 2012, as a laborer stationed within the Erie County Supreme Court Building located at 25 Delaware Avenue in Buffalo, New York.

16. Plaintiff Reid is African American.

17. Plaintiff Reid has usually worked the evening shift at the Erie County Supreme Court Building, 4:30 p.m. to 12:30 p.m., every Monday through Friday.

18. Plaintiff Reid has been usually assigned to begin his work duties on the first floor of the building. While waiting for the building to clear between 4:30 p.m. and 5:00 p.m., Plaintiff Reid has routinely stood or sat in the front of the building on the Franklin Street side of the building.

19. Additionally, as employees and personnel leave for the evening, Plaintiff Reid had routinely exchanged pleasantries and well wishes to those leaving the building. At all times Plaintiff Reid remained friendly, cordial, and professional.

20. In or about March 2013, Plaintiff Reid was informed by his supervisor, Ron Kaun ("Mr. Kaun"), that Assistant Administrative Clerk Amy Hughes ("Ms. Hughes"), a Caucasian woman, was uncomfortable with his presence on the first floor of the building because of her work with the District Attorney's Office and the number of blacks and minorities prosecuted by her office.

21. Upon learning of this, Plaintiff Reid ceased exchanging pleasantries with Ms. Hughes.

22. In or about April 2013, Ms. Hughes again complained about Plaintiff Reid's presence due to his race. Plaintiff Reid informed his supervisor, Mr. Kaun, he had not spoken with Ms. Hughes since her earlier (inappropriate) comments and he had no intention of speaking with her. Defendant, through its agent, somehow was seeking an accommodation of Ms. Hughes' fear of African Americans by causing Plaintiff Reid to change his pleasant behavior/presence, an accommodation that was not appropriate or legal.

23. On or about August 7, 2013, Ms. Hughes, upon information and belief, again complained about Plaintiff Reid's presence due to his race, and Mr. Kaun instructed Plaintiff Reid "to stay out of sight." Plaintiff Reid informed Mr. Kaun he still had not spoken to Ms. Hughes since the first complaint and he also informed Mr. Kaun that this was not acceptable.

24. On or about August 14, 2013, Plaintiff Reid filed an internal complaint with the County of Erie Equal Employment Opportunity ("EEO") Office, alleging he was being harassed and discriminated against on account of his race.

25. On or about August 29, 2013, Plaintiff Reid attended a meeting with his supervisor, Mr. Kaun, EEO Director Jesse Burnett, and Deputy Commissioner of Buildings and Grounds for the Department of Public Works, Daniel Rizzo ("Mr. Rizzo"). The discussion at the meeting pertained to seeking a resolution in regards to Plaintiff Reid's discrimination complaint, and included some discussion about Plaintiff Reid starting his work shift in a different area. There was no discussion about Ms. Hughes' inappropriateness and/or the legality of her alleged accommodation needs.

26. On or about September 9, 2013, Plaintiff Reid received a telephone call from EEO Director Jesse Burnett. During the telephone conversation, Plaintiff Reid informed Mr. Burnett that he was not withdrawing his EEO complaint.

27. On or about September 12, 2013, upon information and belief, security guard Charles Krathuas was instructed by Mr. Rizzo to monitor and report on Plaintiff Reid's work location.

28. On or about September 16, 2013, Mr. Rizzo gave Plaintiff Reid a written warning, charging him with disobeying a direct order to start his work shift in a different area. No such direct order was ever given.

29. In retaliation for Plaintiff Reid's EEO complaint concerning racial discrimination, he was subjected to monitoring and disciplinary action.

30. On or about September 27, 2013, Plaintiff Reid filed a grievance with the Union concerning the unjustified and unlawful written warning he received from Mr. Rizzo.

31. On or about October 18, 2013, Plaintiff Reid filed a formal complaint with the Equal Employment Opportunity Commission against Defendant and Mr. Rizzo.

32. On or about April 28, 2015, the Buffalo Office of the EEO Commission issued a written decision in regards to Plaintiff Reid's claims. The Commission determined that probable cause exists that Plaintiff Reid was mistreated because of his race and in retaliation for having complained about race discrimination, in that he was monitored and disciplined, in violation of Title VII of the Civil Rights Act of 1964.

33. On or about October 8, 2015, Plaintiff Reid was issued a Right-to-Sue letter by the United States Department of Justice.

As for Plaintiff Palmeri

34. Plaintiff Palmeri has been employed by Defendant in its Department of Public Works as a Maintenance Mechanic since approximately 1991.

35. In the role of Maintenance Mechanic, Plaintiff Palmeri is primarily responsible for plumbing, grounds work, electrical work, etc., at various County of Erie buildings, and was most recently stationed at the Edward A. Rath County Office Building ("Rath Building"), working the second shift from 4:00 p.m. to 12:00 a.m.

36. Additionally, Plaintiff Palmeri is a member of the American Federation of State, County and Municipal Employees Local 1095, Council 66, AFL-CIO ("the Union"), and acts as a Union Representative.

37. Plaintiff Palmeri is familiar with Plaintiff Reid and has witnessed some of the discriminatory conduct against Plaintiff Reid.

38. Plaintiff Palmeri witnessed a security guard following and/or monitoring Plaintiff Reid at Erie County Hall on or about September 12, 2013.

39. On or about September 16, 2013, Plaintiff Palmeri was asked to participate in the meeting between Plaintiff Reid and Mr. Rizzo, as a Union Representative, at which time Plaintiff

Reid received his written warning (“write-up”) for allegedly disobeying a direct order from a supervisor.

40. Upon information and belief, on the date of said meeting, Defendant deceptively told Plaintiff Palmeri that Plaintiff Reid wanted to speak with him about an issue at the Erie County Supreme Court Building, where Plaintiff Reid was working. Defendant did not tell Plaintiff Palmeri that he was attending a “write-up” meeting.

41. During the “write-up” meeting, Plaintiff Palmeri witnessed behavior by Mr. Rizzo toward Plaintiff Reid that was both unprofessional and demeaning.

42. Plaintiff Reid subsequently asked Plaintiff Palmeri to attend a scheduled EEOC mediation meeting on Plaintiff Reid’s behalf, scheduled at the EEOC’s regional offices in Buffalo, New York on January 22, 2014.

43. In or about early January 2014, Defendant learned that Plaintiff Palmeri was scheduled to attend the mediation as a witness on Plaintiff Reid’s behalf. Within days, Plaintiff Palmeri was placed on administrative leave by Defendant and later terminated.

44. On or about January 16, 2013, Plaintiff Palmeri was escorted from Defendant’s property by one of Defendant’s sheriffs in the presence of numerous individuals, causing Plaintiff Palmeri to suffer severe humiliation.

45. On or about January 17, 2013, Plaintiff Palmeri was formally terminated from his employment with the defendant.

46. The reasons offered by Defendant for Plaintiff Palmeri’s termination were/are pretextual.

47. Plaintiff Palmeri's termination by Defendant was retaliation for his participation and/or intent to participate as a witness on behalf of Plaintiff Reid in the investigation by the Buffalo Office of the United States Equal Employment Opportunity Commission.

48. On or about January 22, 2014, Plaintiff Palmeri filed a grievance with the Union for his unlawful termination. On or about January 27, 2014, Plaintiff Palmeri filed a Charge of Discrimination against Defendant with the EEOC, alleging he was terminated in retaliation for his "lawful EEO activity" as a witness for Plaintiff Reid.

49. On or about August 21, 2014, arbitrator Howard G. Foster, determined that defendant violated the union contract when it terminated Plaintiff Palmeri.

50. Plaintiff Palmeri was reinstated to his position with Defendant, however, he was erroneously not awarded any compensation for lost pay or benefits and he has thus suffered economic harm due to Defendant's retaliation.

51. On or about November 20, 2015, Plaintiff Palmeri was issued a Right-to-Sue letter by the United States Department of Justice.

As for Plaintiff Ricotta

52. In or about 1998, Plaintiff Ricotta began working for Defendant as a Seasonal Laborer. Plaintiff Ricotta later became a Building Maintenance Mechanic.

53. Plaintiff Ricotta is familiar with Plaintiff Reid and has witnessed some of the discriminatory conduct against Plaintiff Reid.

54. Plaintiff Ricotta spoke with Mr. Krathaus about his monitoring of Plaintiff Reid on September 12, 2013, and Mr. Krathaus informed Plaintiff Ricotta he was following direct orders from Mr. Rizzo to monitor Plaintiff Reid's location.

55. Plaintiff Reid asked Plaintiff Ricotta to attend the scheduled EEOC mediation meeting on Plaintiff Reid's behalf, scheduled at the EEOC's regional offices in Buffalo on January 22, 2014.

56. Upon information and belief, on or about January 10, 2014, Defendant learned that Plaintiff Ricotta was scheduled to attend the mediation as a witness on Plaintiff Reid's behalf. Within days, Plaintiff Ricotta was terminated.

57. On or about January 17, 2014, Plaintiff Ricotta was discharged from his employment with Defendant.

58. The reasons offered by Defendant for Plaintiff Ricotta's termination were/are pretextual.

59. Plaintiff Ricotta's termination by Defendant was retaliation for his participation and/or intent to participate as a witness on behalf of Plaintiff Reid in the EEOC's investigation.

60. On or about January 21, 2014, Plaintiff Ricotta filed a grievance with the Union regarding his unlawful termination. On February 18, 2014, Plaintiff Ricotta filed a Charge of Discrimination against Defendant with the EEOC, alleging he was terminated in retaliation for his participation on Plaintiff Reid's behalf on his EEOC Charge.

61. On or about August 21, 2014, arbitrator Howard G. Foster, determined that the defendant violated the CBA when it terminated Plaintiff Ricotta.

62. Plaintiff Ricotta was reinstated to his position with Defendant, however, he was erroneously not awarded any compensation for lost pay or benefits and he has thus suffered economic harm due to Defendant's retaliation.

63. On or about May 22, 2015 the Buffalo Office of the EEO Commission issued a written decision in regards to Plaintiff Ricotta's claims. The Commission determined that

probable cause exists to believe that Plaintiff Ricotta was terminated in retaliation for having participated in an EEOC investigation, in violation of Title VII of the Civil Rights Act of 1964.

64. On or about November 20, 2015, Plaintiff Ricotta was issued a Right-to-Sue letter by the United States Department of Justice.

**FIRST CAUSE OF ACTION—TITLE VII OF THE CIVIL RIGHTS ACT OF
1964, 42 U.S.C. § 2000e**

65. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs “1” through “64” as if fully set forth herein.

66. Defendant through its agents and employees, racially discriminated against Plaintiff Reid in his employment, and retaliated against Plaintiffs Reid, Ricotta, and Palmeri in their employment, as set forth in the preceding paragraphs.

67. Defendant lacked any business, reason or justification for its aforesaid disparate treatment of Plaintiffs, and instead subjected Plaintiffs to the above described adverse employment actions based upon race and/or in retaliation for Plaintiffs filing of and/or participation in the filing of charges of discrimination and opposing discrimination. Defendant’s discriminatory and retaliatory conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 20003, as amended.

68. Plaintiff Reid, an African American, has been treated differently from similarly situated white employees and has been abused and violated because of his race and color. Additionally, Plaintiff Reid was retaliated against, through monitoring and disciplinary action, for his opposition to said discrimination.

69. Plaintiffs Ricotta and Palmeri were retaliated against for their opposition to discrimination and support of Plaintiff Reid.

70. Plaintiffs have suffered physical and emotional harm as a result of Defendant's actions. The discrimination and/or retaliation they were subjected to was blatant and unjustified and damaged them physically, emotionally, and professionally.

71. Plaintiffs Reid, Ricotta, and Palmeri have suffered, are now suffering and will continue to suffer irreparable injury and monetary damages as a result of the defendant's discriminatory and/or retaliatory conduct unless and until this Court grants relief and an award, *inter alia*, of lost wages and benefits for Plaintiffs Ricotta and Palmeri, and compensatory damages for all Plaintiffs against Defendant.

72. Plaintiffs have been damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION—NEW YORK STATE EXECUTIVE LAW § 296

73. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "72" as if fully set forth herein.

74. Defendant through its agents and employees racially discriminated against Plaintiff Reid in his employment, and retaliated against Plaintiffs Reid, Ricotta, and Palmeri in their employment, as set forth in the preceding paragraphs.

75. The above discriminatory practices based on race, color, and/or retaliation by Defendant its agents and employees, violates the New York State Human Rights Law.

76. Plaintiffs have suffered physical and emotional harm as a result of Defendant's actions. The discrimination and/or retaliation they were subjected to was blatant and unjustified and damaged them physically, emotionally, and professionally.

77. Plaintiffs Reid, Ricotta, and Palmeri have suffered, are now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendant's discriminatory and/or retaliatory conduct unless and until this Court grants relief and an award,

inter alia, of lost wages and benefits for Plaintiffs Ricotta and Palmeri, and compensatory damages for all Plaintiffs against Defendant.

78. Plaintiffs have been damaged in an amount to be determined at trial.

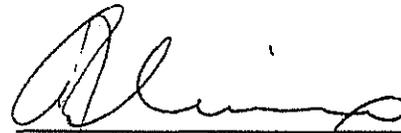
DEMAND FOR JURY TRIAL

79. Plaintiffs hereby demand a jury trial.

WHEREFORE, Plaintiffs respectfully requests that this Court grant them the following relief:

- (A) Judgment in favor of the Plaintiffs against Defendant for compensatory damages, including lost wages and benefits, in an amount to be determined by a properly charged jury;
- (B) A monetary award for attorney's fees and the costs necessary to this action; and
- (C) Any such other and further relief as this Court deems just and proper.

December 29, 2015
Hamburg, New York



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



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 14, 2016

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

Dear Ms. McCarthy:

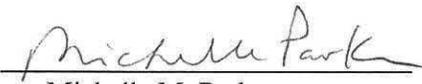
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Lukasik, Gary v. ECMCC, County of Erie, Erie County Sheriff's Office, Sheriff Howard</i>
Document Received:	Notice of Claim
Name of Claimant:	Gary Lukasik 934 South Park Avenue Buffalo, NY 14210
Claimant's attorney:	Richard P. Valentine, Esq. 416 Pearl Street 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.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

GARY LUKASIK
934 South Park Avenue
Buffalo, New York 14210

Claimants,

vs.

**ERIE COUNTY MEDICAL CENTER
CORPORATION**
462 Grider Street
Buffalo, New York 14215

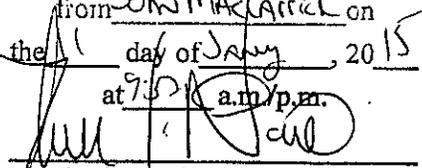
COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

ERIE COUNTY SHERIFF'S DEPARTMENT
10 Delaware Avenue
Buffalo, New York 14202

TIMOTHY B. HOWARD
SHERIFF-ERIE COUNTY
10 Delaware Avenue
Buffalo, New York 14202

Respondents.

PLEASE TAKE NOTICE that the claimant, GARY LUKASIK, claims and makes claims against the Respondents, TIMOTHY B. HOWARD, SHERIFF- ERIE COUNTY; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE; for damages resulting from physical injuries

This paper received at the
Erie County Attorney's Office
from John MacFarrell on
the 1 day of July, 2015
at 9:30 a.m./p.m.

Assistant County Attorney

NOTICE OF CLAIM

sustained by GARY LUKASIK, and, in support of said claim, states as follows:

1. The post office address of the Claimant is: GARY LUKASIK, 934 South Park Avenue, Buffalo, New York 14210.

2. The post office address of Claimant's attorneys is: RICHARD P. VALENTINE, ESQ., P.C., (by Richard P. Valentine, Esq., of counsel), 416 Pearl Street, Buffalo, New York 14202.

3. The claims against the Respondents, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE; are for physical injury and conscious pain and suffering of the Claimant, GARY LUKASIK, due to the negligence, carelessness, recklessness, malfeasance and deviations from professional standards of care by the Respondents, TIMOTHY B. HOWARD, SHERIFF-ERIE; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE; through Respondents' respective agents, ostensible agents, servants and/or employees, resulting from improper delivery of medical and surgical services to the Claimant, GARY LUKASIK, continuously, in the period from April 2, 2015 through and including October 22, 2015, while the Claimant was in custody continuously, first, as a criminal suspect awaiting prosecution, and then, incarcerated as a prisoner following conviction. His continuous confinement in the aforementioned period was at the Erie County Holding Center, the Erie County Correctional Facility, and/or, at the Erie County Medical Center, respectively.

4. The particular place where the acts of negligence, carelessness, recklessness, malfeasance and deviations from professional standards of care by the ERIE COUNTY MEDICAL CENTER CORPORATION, through its agents, ostensible agents, servants and/or employees, that contributed to the Claimant's injuries for which he makes claim herein, were committed at the Erie

County Medical Center, 462 Grider Street, Buffalo, New York.

5. The particular places where the acts of negligence, carelessness, recklessness, malfeasance and deviations from professional standards of care by the COUNTY OF ERIE, through its agents, ostensible agents, servants and/or employees, that contributed to the Claimants' injuries for which he makes claim herein, were committed at: the Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York; at the Erie County Medical Center, 462 Grider Street, Buffalo, New York; and, at the Erie County Correctional Facility, 11581 Walden Avenue, Alden, New York 14004.

6. The particular places where the acts of negligence, carelessness, recklessness, malfeasance and deviations from professional standards of care by ERIE COUNTY SHERIFF'S DEPARTMENT, through its agents, ostensible agents, servants and/or employees, that contributed to the Claimants' injuries for which he makes claim herein, were committed at: the Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York; at the Erie County Medical Center, 462 Grider Street, Buffalo, New York; and, at the Erie County Correctional Facility, 11581 Walden Avenue, Alden, New York 14004.

7. The particular places where the acts of negligence, carelessness, recklessness, malfeasance and deviations from professional standards of care by TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, individually, and through his agents, ostensible agents, servants and/or employees, that contributed to the Claimants' injuries for which he makes claim herein, were committed at: the Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York; at the Erie County Medical Center, 462 Grider Street, Buffalo, New York; and, at the Erie County Correctional Facility, 11581 Walden Avenue, Alden, New York 14004.

8. The circumstances under which the injuries were sustained, and the manner in which the claim arose, were as follows:

Beginning on or about April 2, 2015, and continuing up to and including October 22, 2015, the Claimant, GARY LUKASIK, was in the Respondents' custody and control, continuously, first, as a criminal suspect awaiting prosecution, and then, incarcerated as a prisoner following conviction. His continuous confinement in the afore-mentioned period was at the Erie County Holding Center, the Erie County Correctional Facility, and/or at the Erie County Medical Center, respectively. Irrespective of the particular places of his confinement, he was, at all times, in the custody and control of Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY.

In the period from on or about April 2, 2015 through and including April 7, 2015, at the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, the Claimant was held in custody at the Erie County Holding Center, under the direct supervision and control of the ERIE COUNTY SHERIFF'S DEPARTMENT by its agents, ostensible agents, servants and/or employees. During these first five days of his confinement, the Claimant underwent physical examinations and medical testing, including multiple blood draws and collection of bodily fluids. In addition, the Claimant was given unknown medications which he was compelled to ingest. These actions were taken by agents, ostensible agents, servants and/or employees of the ERIE COUNTY SHERIFF'S DEPARTMENT. During these five days, in the course of these actions by agents, ostensible agents, servants and/or employees of the ERIE COUNTY SHERIFF'S DEPARTMENT, there were negligent, careless, and reckless departures from standard medical protocols intended to establish appropriate intake medical assessment and, thereby, a baseline for ongoing delivery of necessary medical and/or surgical care of the Claimant while in custody at the Erie County Holding Center. These departures, in addition to being violations of the protocols, standards, policies and procedures of ERIE COUNTY SHERIFF'S DEPARTMENT, and, of the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, also amounted to deviations from accepted standards of medical and

surgical care by personnel at the Erie County Holding Center in rendering assessment, care and treatment to the Claimant, GARY LUKASIK.

As a direct result of the acts and omissions described herein, committed by the Respondents, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY and the ERIE COUNTY SHERIFF'S DEPARTMENT, in the period from April 2, 2015 through and including April 7, 2015, the Claimant, GARY LUKASIK, was caused to sustain physical injuries, together with conscious pain and suffering, including, suffering a sudden and unexplained loss of consciousness which necessitated the Claimant being transported, while unconscious, to the Erie County Medical Center on April 7, 2015.

In the period from on or about April 7, 2015 through and including April 14, 2015, at the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, the Claimant was held in custody at the Erie County Medical Center, under the direct supervision and control of agents, ostensible agents, servants and/or employees of the Respondents, the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE. During these seven days of his continuous confinement, the Claimant underwent physical examinations, invasive procedures and medical testing, including multiple blood draws and collection of bodily fluids. In addition, the Claimant was given unknown medications which he was compelled to ingest. These actions were taken by agents, ostensible agents, servants and/or employees of the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE, without explanation regarding what was being done, or why.

When Claimant first regained consciousness at the Erie County Medical Center, after being transferred there on April 7, 2015, he was hand-cuffed to a hospital bed. As he was regaining consciousness, he heard someone say, "the patient is retaining fluids". Soon

thereafter, he felt someone reach for his penis and attempt to insert a catheter. While this was attempted, he felt a severe pinching sensation, and, heard the person holding his penis say, "Give me a bigger catheter". The passage of this larger catheter was painful. After it had been placed, the man who had inserted it said "you can uncuff the patient. He's not going anywhere with this in him." Shortly thereafter, a nurse told the Claimant, "Mr. Lukasik, if I weren't cuffed to the bed I'd have punched him when he put in that catheter. He did that very forcefully". The catheter remained inserted for approximately six days, and was removed shortly before the Claimant was transferred from the Erie County Medical Center, on or about April 14, 2015.

During these days of confinement at the Erie County Medical Center from April 7, 2015 through and including April 14, 2015, in the course of these actions by agents, ostensible agents, servants and/or employees of the ERIE COUNTY SHERIFF'S DEPARTMENT, the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE, at the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, there were negligent, careless, and reckless departures from standard medical protocols intended to establish appropriate ongoing delivery of necessary medical and/or surgical care of the Claimant while in custody at the Erie County Medical Center. These departures, in addition to being violations of the protocols, standards, policies and procedures of ERIE COUNTY SHERIFF'S DEPARTMENT, and, the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, also amounted to deviations from accepted standards of care by the Respondents' personnel at the Erie County Medical Center in rendering treatment to the Claimant, GARY LUKASIK.

As a direct result of the acts and omissions described herein, committed by the Respondents, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and,

the COUNTY OF ERIE, in the period from April 7, 2015 through and including April 14, 2015, the Claimant, GARY LUKASIK, was caused to sustain physical injuries, together with conscious pain and suffering, including, pain while passing urine through the inserted catheter and while moving with the catheter inserted into his penis. He developed bruising and "black and blue" marks on both of his legs. He, also, was compelled to ingest unidentified medication with uncertain consequences.

In the period from on or about April 14, 2015 through and including October 22, 2015, at the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, the Claimant was held in custody at the Erie County Correctional Facility, and/or at the Erie County Holding Center, under the direct supervision and control of agents, ostensible agents, servants and/or employees of the Respondents, the ERIE COUNTY SHERIFF'S DEPARTMENT, although, at times (and for admission periods), during the period from on or about April 14, 2015 through and including October 22, 2015, (dates of which the Claimant cannot recall with specificity), at the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, the Claimant was transferred to, and held in custody at, the Erie County Medical Center, under the direct supervision and control of agents, ostensible agents, servants and/or employees of the Respondents, the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; the COUNTY OF ERIE.

During the period from on or about April 14, 2015 through and including October 22, 2015, while incarcerated at the Erie County Correctional Facility and/or at the Erie County Holding Center, the Claimant reported to "Sick Calls", repeatedly complaining of urinary symptoms including: pain with urination; frequency of urination; urgency of urination; slowed or partially obstructed flow of urine; difficulty initiating a urinary stream; and, needing to push hard to accomplish urinary flow. After being returned to the Erie County Correctional Facility and/or to the

Erie County Holding Center, following transfers and treatments performed at the Erie County Medical Center, the Claimant reported to "Sick Calls", repeatedly complaining of complications from invasive diagnostic and surgical procedures which had been performed at the Erie County Medical Center and/or problems with provision of medication and medical services which had been ordered by personnel at the Erie County Medical Center. During "Sick Calls" at the Erie County Correctional Facility and/or at the Erie County Holding Center, medical providers questioned the Claimant regarding his signs, symptoms and complaints; conducted physical examinations; and, performed medical testing, including multiple blood draws and collection of bodily fluids. In addition, medical providers gave the Claimant unidentified medications which he was compelled to ingest. These actions were taken by agents, ostensible agents, servants and/or employees of the ERIE COUNTY SHERIFF'S DEPARTMENT, without explanation regarding what was being done, or why.

More particularly, in the period from on or about April 14, 2015, when Claimant was first transferred to the Erie County Correctional Facility, the Claimant's urinary symptoms recurred and grew progressively worse. With the development of pain, urgency, frequency and difficulty commencing a urine stream, the Claimant reported for "Sick Calls", but received no relief. His symptoms worsened to the extent that he would have to sit on the toilet and exert hard pressure to even start a flow of urine. At one point, while attempting this maneuver, the Claimant ruptured a hemorrhoid resulting in significant bleeding throughout the bathroom. Despite the progressive worsening of symptoms, and this acute bleeding episode, the Claimant was repeatedly told by medical providers that there was nothing wrong and no resort to more comprehensive evaluation and/or treatment was made.

Approximately three weeks after the bleeding episode, the Claimant was, finally, transferred to the Emergency Department of the Erie County Medical Center where he was

seen by the same physician who had previously catheterized him. On this occasion, the physician attempted to insert another catheter, but was unable to do so. This unsuccessful attempt was extremely painful.

Thereafter, the same doctor performed an invasive diagnostic study involving insertion of a small camera through the Claimant's penis to inspect the urinary tract. This procedure was horribly painful causing the Claimant to scream out in pain. The physician said that he had seen something, (but did not explain what), and then removed the camera and began to insert a catheter. The insertion of this catheter was painful as the path was partially obstructed, but, the physician persisted until the catheter seemed to "break through" the partial obstruction. Once this catheter was inserted, the physician told Claimant that he would be returned to the jail with the catheter in place, but would, thereafter, be returned to the Erie County Medical Center in two-three weeks for further assessment.

Instead of being returned in two to three weeks, it was not until approximately the middle of June, 2015, that he was returned. The Claimant remained catheterized throughout this period. He continued to report for "Sick Calls", but there was no explanation of why timely re-assessment was not undertaken. The medical providers continued to give Claimant unidentified medications which he was compelled to ingest.

In mid-June, 2015, Claimant was finally returned to the Erie County Medical Center. On this occasion, he was seen by different physicians, apparently resident physicians from the Urology service. These physicians removed the catheter which had been in place for several weeks. They, also, performed a sonogram diagnostic study (the first that the Claimant had undergone). These physicians informed the Claimant that there was a partial closure of his urethra. They told him to "keep an eye on it" so it would not get worse. There were, however, no specific treatment (or prevention) modalities initiated. The Claimant was transferred

back to the Erie County Correctional facility.

Approximately four days after his return to the Erie County Correctional Facility, the Claimant passed a dark-brownish/red gelatinous substance while urinating. Thereafter, over approximately the next ten days, the Claimant's ability to urinate became increasingly impaired. Although he complained of these changes in his condition on several occasions to the medical providers at the Erie County Correctional Facility, they did not return him to the Urologists, but instead, prescribed antibiotics and pain medications. Eventually, with his left testicle becoming increasingly swollen, the Claimant became unable to void. This led to his transfer, (by squad car rather than by ambulance), back to the Erie County Medical Center in late-June or early- July, 2015.

The Claimant, eventually, was assigned to the care and treatment of the Urology service. He underwent serial sonogram diagnostic studies, (sometimes two per day), and multiple urinalyses. The Claimant was told that the blood vessels of his swollen testicle were not delivering sufficient blood to preserve the testicle due to a "backup of fluid". As treatment for these problems, urology residents repeatedly inserted a needle into his scrotum to drain fluid from the area in an attempt to relieve fluid "backup". These treatments were excruciatingly painful. Eventually, the Claimant was subjected to surgery to open his penis to facilitate passage of fluid, and, a catheter was inserted into the surgical opening. During this course of treatment, in the period from late June or early-July, 2015 through mid-August, 2015, the Claimant was transferred several times, back and forth, between the Erie County Medical Center and the Erie County Holding Center. Despite these interventions, the blood supply to the Claimant's testicle was not restored, and the testicle died.

From mid-August, 2015, through his release from incarceration on October 22, 2015, the Claimant was transferred several times, back and forth, between the Erie County

Medical Center and the Erie County Correctional Facility. During this period, the Claimant's surgical site was left open and required appropriate attention. But, the urologists at the Erie County Medical Center informed the Claimant that medical providers at the Erie County Correctional Facility were not following their instructions relating to appropriate wound care.

During these days of confinement at the period from on or about April 14, 2015 through and including October 22, 2015, in the course of these actions by agents, ostensible agents, servants and/or employees of the ERIE COUNTY SHERIFF'S DEPARTMENT, the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE, at the Erie County Correctional Facility, at the Erie County Medical Center, and, at the Erie County Holding Center, respectively, there were negligent, careless, and reckless departures from standard medical protocols intended to establish appropriate ongoing delivery of necessary medical and/or surgical care of the Claimant while in the custody of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY. These departures, in addition to being violations of the protocols, standards, policies and procedures of ERIE COUNTY SHERIFF'S DEPARTMENT, and, the direction and orders of the Respondent, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY, also amounted to deviations from accepted standards of care by agents, ostensible agents, servants and/or employees of the Respondents, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; the COUNTY OF ERIE; at the Erie County Correctional Facility, at the Erie County Medical Center, and, at the Erie County Holding Center, in rendering treatment to the Claimant, GARY LUKASIK.

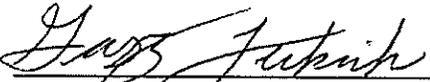
As a direct result of the acts and omissions described herein, committed by agents, ostensible agents, servants and/or employees of the Respondents, TIMOTHY B. HOWARD, SHERIFF-ERIE COUNTY; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE; in the

period from April 14, 2015 through and including October 22, 2015, the Claimant, GARY LUKASIK, was caused to sustain physical injuries, together with conscious pain and suffering, including, pain on urination, progressive worsening of urinary flow, urinary retention together with poor blood flow to left testicle, physical pain associated with insertion of needles to drain fluid from scrotum, surgical opening of penis, poor wound healing of surgical wound, loss of left testicle, impaired ability to void, and, need for further urologic surgical repair. He, also, was compelled to ingest unidentified medication with uncertain consequences.

9. The incidents, as aforementioned, were caused solely by the carelessness, negligence and acts of commission and omission by the Respondents, TIMOTHY B. HOWARD, SHERIFF- ERIE COUNTY; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE; by their, respective, agents, ostensible agents, servants and/or employees, without any fault or negligence on the part of the Claimant, GARY LUKASIK, contributing thereto.

10. The Claimant, GARY LUKASIK, solely by reason of the negligence of the Respondents, TIMOTHY B. HOWARD, SHERIFF- ERIE COUNTY; ERIE COUNTY; the ERIE COUNTY SHERIFF'S DEPARTMENT; the ERIE COUNTY MEDICAL CENTER CORPORATION; and, the COUNTY OF ERIE; by their, respective, agents, ostensible agents, servants and/or employees, as aforesaid, sustained physical injuries, conscious pain and suffering and disability resulting in damages in an amount which exceeds the jurisdictional limits of all other

courts which might otherwise have jurisdiction.


GARY LUKASIK

Sworn to before me this
31st day of December, 2015.



NOTARY PUBLIC

RICHARD P. VALENTINE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires ~~March 30, 2018~~
12/31/2018



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 22, 2016

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

Dear Ms. McCarthy:

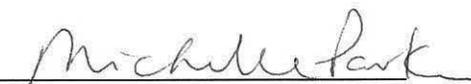
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Michael Borders El Bey v. Erie County Department of Mental Health</i>
Document Received:	Notice of Claim
Name of Claimant:	Michael Borders El Bey ICN #146234 Erie County Holding Center 40 Delaware Avenue Buffalo, New York 14202-3999
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

ECDOH Security S. HARVEY refused to allow claimant to make copies of records
mental health complaints

Averment of Jurisdiction - Quo Warranto
For the record, to be placed in the records and the to be read
into the records

RECEIVED
JAN 20 2016
ERIE COUNTY
DEPARTMENT OF LAW

Notice of Default

Unlawful Imprisonment ICN 146234

January 6, 2016

Res Judicata

Default; Default Judgment
Failure to respond to presentment in allotted frame ^{TIME}

The Claimant Michael Borders El Bey, Ex Rel. [MICHAEL VAN BORDERS] Sovereign Moorish American National, in propria persona (sui juris natural flesh and blood being submit this Notice of Default to acting Supervisor/Magistrate Thomas P. Amodeo, My Honor Amy C. Martoche My Honor Jaharr S. Pridgen, Barbara Johnson-Lee, District Attorney Frank A. Sedita, Bar Association/Buffalo New York (Erie County) for failure to produce delegation of authority orders from Congress according to Article 3, Sec. 1 and 2, Oath of Office and Bond (must have both) in allotted time frame (24 hours). The Claimant asserts that once he allowed his Averment of Jurisdiction to proceed him, he was transported from the Erie County Correctional Facility on January 4, 2016 2:00 P.M. court date to the Foreign Buffalo City Court Corporation which the Claimant Michael Borders El Bey made a special appearance and challenged the court jurisdiction, to produce delegation of authority orders or dismiss and expunge claims from the records. The Foreign Court Corporation/Amy C. Martoche fail to produce delegation of authority orders and threaten to keep Claimant unlawfully imprisoned (human trafficking) if the Claimant Michael Borders El Bey did not sign a contract with the foreign Buffalo City Court Corporation and also submit to a mental health Evaluation where (she) Amy C. Martoche could then attempt to create another fraudulent (scheme) to have the Claimant Michael Borders El Bey Sovereign Moorish American National (Jus Sanguinis) placed under a Foreign Entity Mental Health Supervision. Amy C. Martoche and her co-workers should be brought before a lawful American Republic Military Tribunal and prosecuted for Racketeering, human trafficking, Genocide, Murder and Piracy. Amy C. Martoche is ~~is~~ also in violation of 21 USC 848 (Continuing Criminal Enterprise) who is taking advantage of the Indigenous People (those who are branded black, Colored, Negro, African American and Indian) in misguided society. It should be noted that the Claimant do not accept the Foreign Court Corporation offer to Contract or Amy C. Martoche sick offer of a Mental Health Evaluation. The Claimant believe Amy C. Martoche is in great need of Mental Health Care, along with imprisonment. Failure to release upon receipt of Notice Default will result in a Default Judgment.

The Claimant Michael Borders El Bey asserts that upon arrival in the New York Territory [City of Buffalo] during approx. the month of January - February 2015 he certified mailed Notice of Name Change and Correction, and Judicial Proclamation concerning Status and Nationality to the State of New York Corporation, City of Buffalo Corporation [Police Dept.], Sheriff Timothy Howard, Acting Mayor Byron Brown. The Claimant Michael Borders El Bey also during the Month of October 2015 certified mailed documents/writs (name change and correction), judicial proclamation) to the Buffalo Attorney General Office for their records in terms of status / nationality. I AM the Sovereign/Supreme Authority. The Claimant asserts that if there is any complaint against Michael Borders El Bey, the complaint must be filed and or brought before a consular court or Title III Court according Sec. 1 (delegated authority orders) and Sec 2 (Diversity Citizenship), not the private for profit foreign (U.S. Corporation Courts, who seek to capture artificial persons as lost

vessels/cargo for the sole purpose of Booty an Prize, because the foreign U.S. Corporation Courts operate under Admiralty Law (on the seas/oceans) and Maritime Law (commerce) and are operating illegally in Al Morocco/America because Congress in 1861 adjourned Sene Dis where as the several union state gave up their offices and their right to due business in my land "The Northgate" Northwest Amexem=Northwest Africa=North America=Central America=South American and the Adjoining Islands. The Buffalo City Court Corporation/Foreign is attempting to combine a previous September claim (void ab initio) with the present fraudulent unconscionable claim under private law/color of law and must have consent of both parties before the foreing court can proceed.

The Union States/United States Corporation only purpose for occupying Almorocco/America is to Escheat the Estate/Indigenous People through hypothication via [Birth Certificate=Cestui Que (Vie) Trust], [Social Security Number=Book Keeping Number], [Christian Black Codes=Branding the Moors American Nationsl - Black, Colored, Negro, African American and Indians] and the [14th Amendment -Creation of the artificial person/corporation on paper (NAME IN ALL CAPITAL LETTERS) which is in violation of the Treaty of Peace and Friendship 1787-1836 between the Moroccan Empire and the subordinate U.S. Corporation, which is Fraud, Treason, Genocided, Human Trafficking, Piracy, Rackertering and Peonage.

The Claimant Michael Borders El Bey request/demand the U.S. Marshals Office perform their official duties per Pontiff Francis Civil Orders-July 4, 2014 and Congress to arrest/bring charges against all said person/corporation upon review of this Notice of Default (evidence). Failure to perform your official duties as public servants will result in a \$100,000,000.00 Million Federal Notes Lien/lawsuit in lieu of Article 1, Sec. 10 (Gold and Silver Clause) against each corporations.

New York State is a Sovereign State veiled by an imposture Government (Demo's) and all Official Public Servant and Judges are deem to know the law of the land at Article 6. The Claimant Michael Borders El Bey demand the immedicate recusal of Amy C. Martoche, by the [Judicial Conduct Commission] and that an immediate response is demanded from the U.S. Marshals Office, Attorney General Office, Judicial Conduct Commission, Acting President Obama and General Ham and Archbishop New York/Timothy The Foreign Buffalo City Court is suppose to give remedy, but yet stand mute, the Karmatic Debt is now on the U.S. Corporations. The Claimant Michael Borders El Bey also stated on the the record that he will not attending the fictitious court schedule court date of January 21, 2016 and do not accept the courts offer to contract or mental health evaluation.

I AM Michael Borders El Bey, Sovereign Moorish American National who affirm that the above information is true to the best of his knowledge and that a true copy of this Notice of Default was certified mailed and or hand delivered to Thomas P. Amodio, Amy C. Martoche, Jaharr S. Pridgen, Barbara Johnson-Lee, Frank A. Sedita, [Judicial Conduct Commission], [Bar Association of Erie County], U.S. Marshals Office/Albany/ Buffalo, Attorney General Office/Albany, Acting President Obama and General Ham and Erie County Department of Health on 13 day of January, 2016

cc: 1 copy U.S. Marshals (see attached copies (2) of Forensics) *Michael Borders El Bey*
1 copy Moorish Science Temple of America *Without Prejudice UCC 1-308*
1 copy Great Seal, Anaid El
1 copy to Erie County Dept. of Health (see attached Avenment of Jurisdiction) + (2) copies of Forensic Complaint
Note: Avenment of Jurisdiction certified mailed (7006-3450-001-8098-0395 Dec. 31 2015
7007-1490-0003-3580-1837, 7007-1490-0003-3580-1813). *1 copy Attorney General (2 copies of forensic Complaint attached)*
1 copy will be forwarded to Interpol

Affirmation of Jurisdiction / Quo Warranto

For the record, To read into the Record

Unlawful Imprisonment #146234 Cell FNO #3

December 28, 2015

Res Judicata

"There are numerous Supreme Court cases that clearly state that once jurisdiction of the Court has been challenged, Jurisdiction must be proven, If the Court cannot prove Jurisdiction, the Court must dismiss claims" Prima facie evidence.

The Claimant Michael Borders El Bey, Ex Rel. [MICHAEL VAN BORDERS] Sovereign Moorish American National, In propria Persona (Sui Juris) Natural Flesh and Blood Being was unlawfully arrested / kidnapped by the [City of Buffalo private corporation / Security Guard Department - those who deem themselves Police] on December 22, 2015 against his will. On December 23, 2015 at approx. 10:00 AM the Claimant Michael Borders El Bey made a special appearance before My Honor Pridgen to challenge the Buffalo City Court / foreign Jurisdiction after making his Status known (Moorish American) and was denied the right to challenge Jurisdiction of the Foreign Fictitious Court. On the same day I Michael Borders El Bey made a special appearance in front of My Honor Amy Martoche and attempted to challenge the Courts Jurisdiction and was rudely interrupted by My Honor Martoche where she schedule a pre-trial date on December 28, 2015 and refused to release Michael Borders El Bey from unlawful imprisonment (human Trafficking) for the sole purpose of receiving federal notes from the fraudulent construct: Birth Certificate / Cestui Que Vie Trust and Bail/Bond (Ransom).

On December 28, 2015 at approx 6:00 AM the Claimant Michael Borders El Bey was pulled out of ~~the~~ Concentration Camp Cell FNO #3 [Foreign County Jail] and at approx 10:30 AM made a special appearance to challenge the Courts Jurisdiction once again in front of My Honor Johnson-Lee. Once the Claimant Michael Borders El Bey demanded that My Honor Johnson-Lee produce delegation of authority orders from Congress, Public Hazard/Ma/ practice bond (covering specific Job performance), Oath of Office and or a contract giving the Authority to bring the suggested claims against me, the Court / My Honor Johnson-Lee fail to produce the hard evidence and was suppose to dismiss the false claims, but in ~~Commr 5B~~ schedule a Court date of January 4, 2015, back supposedly ~~Page 64 of 129~~ Honor

Mar toche whom I Michael Borders El Bey had made a special appearance under similar circumstances where My Honor Mar toche fail to respond to Averment of Jurisdiction (dated approx September 13, 2015) Notice of Default (dated September 25, 2015) with a set time ~~frame~~ frame (5 days) to produce Hard evidence delegation of authority, bond, Oath of Office and Contract. My Honor Mar toche, the City of Buffalo and the Head District Attorney/Foreign was certified Mailed a Notice of Default Judgment. The claimant Michael Borders El Bey asserts that the City of Buffalo and Police Dept. Buffalo City Court: Amy Martoche, My Honor Pridgen and My Johnson-Lee and the Head District Attorney ^{Bar Association} in violation 15 USC (fraud), 18 USC 241, 242 (Conspire to deprive a persons rights and deprivation of rights under color of Law) Canon 2057 (immediate dissolution of Cestui Que (vie) Trust once a Person show competency of their status and Nationality), ~~July 11, 2013~~ July 11, 2013 Motu Proprio Letter Pope Francis on Criminal matters 1, 2, 3 and The Pope's Will Orders (See The Pope Sends Obama a powerful letter via Attorney. The Claimant Michael Borders El Bey asserts that he has been unlawfully imprisoned (human trafficking) since December 22, 2015 and that each day of unlawful imprisonment will be followed by \$5,000,000.00 federal notes (pen/Lawsuit Per Person/Corporation) each day. And each person imprison according to the Roman Curia and the International Court of Justice. "See The Clarified Doctrine"

The Head district attorney, [City of Buffalo/Police Dept], Amy Martoche, My Honor Pridgen, My Honor Johnson-Lee and Chief Magistrate/Supervisor Thomas P. Amodico have 24 hour to produce delegation of authority, bond, Oath of office and a contract between Myself and the foreign fictitious Tribunal. Failure to produce the above documents (evidence) and release Michael Borders El Bey from unlawful imprisonment will be default. Also, Michael Borders El Bey did not/don't accept any future schedule court dates because they are only attempts to frustrate and intimidate the claimant Michael Borders El Bey. The claimant demand a response from New York State Archbishop, U.S. Marshall and Grand Army Republic General/Head of New York State Archbishop/Cardinal-Legate (all U.S. Corporation are a part of the Roman Curia).

I AM Michael Borders El Bey who affirmed that all the above information is true to the best of his knowledge and that a true copy of this Averment of Jurisdiction was certified mailed to Head District Attorney Sedito, Amy Martoche, My Honor Pridgen, My Honor Johnson-Lee, City of Buffalo/Police, New York State Archbishop/General and supervising Judge/magistrate Thomas P. Amodico on 31 day of December, 2015. Buffalo Bar Association, U.S. Marshals

(24 hours up receipt to produce above said evidence/Deed to undo or release said National Michael Borders El Bey from unlawful imprisonment and expunge from the records.

Michael Borders El Bey
 Without Prejudice USC 1-308, 1-103. Creditor

- 1 Personal Copy
- 1 U.S. Marshals (The Only delegated Police Power Per Pope Francis and Congress)
- 1 Copy Bar Association of Erie County/ Buffalo

Note: Home were the claimant can also be reached is 15163 Holly Place, Buffalo, New York 14209. All persons/corporations that underlined were certified mailed on said date.



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 25, 2016

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

Dear Ms. McCarthy:

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

File Name:	<i>Government Payment Services, Inc. v. ECSO and Shane Wilson - credit card fraud re bail</i>
Document Received:	Summons and Complaint
Name of Claimant:	Government Payment Services, Inc. 7102 Lakeview Parkway West Drive Indianapolis, Indiana 46268
Claimant's attorney:	Steven W. Wells, Esq. Hodgson Russ LLP The Guaranty Building 140 Pearl Street, Suite 100 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

Comm. 5D-7
Page 66 of 129

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

GOVERNMENT PAYMENT SERVICE, INC.
7102 Lakeview Parkway West Drive
Indianapolis, Indiana 46268,

Plaintiff,

AMENDED SUMMONS

Index No.: 813646/2015

-vs-

ERIE COUNTY SHERIFF'S OFFICE
10 Delaware Avenue
Buffalo, New York 14202

and

SHANE WILSON
26 Roslyn Street
Buffalo, New York 14211,

Defendants.

2016 JAN 13 PM 3:

RECEIVED
ERIE COUNTY
SHERIFF'S OFFICE

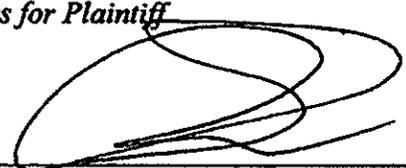
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to appear herein and to answer the attached Complaint in this action within twenty (20) days after service of this Summons upon you personally, exclusive of the day of service, or within thirty (30) days of service if effectuated through the New York Secretary of State. You can make such appearance by serving a complete copy of your Answer, in the form required by law, on the attorneys named below, directed to the attention of the individual attorney or department whose name appears below. In case of your failure to answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue in Erie County is pursuant to Sections 503 and 505 of the New York Civil Practice Law and Rules on account of this action being brought against a public authority and the residences of Defendants.

DATED: Buffalo, New York
December 18, 2015

HODGSON RUSS LLP
Attorneys for Plaintiff

By: 

Steven W. Wells

The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202
Telephone: (716) 848-1233
E-mail: swells@hodgsonruss.com

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

GOVERNMENT PAYMENT SERVICE, INC.,

Plaintiff,

-vs-

ERIE COUNTY SHERIFF'S OFFICE,

and

SHANE WILSON,

Defendants.

AMENDED COMPLAINT

Index No.: 813646/2015

Plaintiff, Government Payment Service, Inc. ("GPS"), by and through its attorneys, Hodgson Russ, LLP, Steven W. Wells, of Counsel, for its Amended Complaint against the Erie County Sheriff's Office, and Shane Wilson (together, the "Defendants") alleges as follows:

1. This Amended Complaint is being filed and served for the limited purpose of substituting the Erie County Sheriff's Office (the "Sheriff's Office") as a Defendant in place of Christopher L. Jacobs, *Erie County Clerk*, because the Erie County Clerk does not, in fact, hold the bond payment that is at issue in this action.

2. Plaintiff, Shane Wilson has not been served with the original Complaint yet, and the allegations against him have not been changed or amended in this Amended Complaint.

3. Based on the foregoing, all Defendants are entitled to Answer this Amended Complaint.

4.

PARTIES

5. Plaintiff, GPS, is a Delaware corporation with its principal place of business at 7102 Lakeview Parkway West Drive, Indianapolis, Indiana 46268. GPS's business involves processing consumers' credit, debit, and pre-paid debit card payments, and submitting those payments to participating government entities within GPS' GovPayNet network.

6. The Erie County Sheriff's Office is located at 10 Delaware Avenue, Buffalo, New York, 14202.

7. Shane Wilson ("Wilson") is a defendant in a criminal case before the Erie County Court, Docket Number CR-8575-14, and he resides at 26 Roslyn Street, Buffalo, New York 14211.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the Defendants pursuant to Section 301 of the New York Civil Practice Law and Rules (the "CPLR").

5. Venue is appropriate in this Court pursuant to CPLR §505 because it is an action against a public authority and pursuant to CPLR §503 based upon the residences of the parties.

RELEVANT BACKGROUND

6. On January 1, 2001, GPS entered into an Independent Contractor Agreement ("Agreement") with the Sheriff's Office, wherein the parties agreed the Sheriff's Office would join GPS' GovPayNet Payment Network and that the Sheriff's Office would accept payments from GPS made to the Sheriff's Office by consumers who used the various payment processing services offered by GPS. With few interruptions, the parties have worked under a

similar arrangement for almost 15 years.. The most recent Agreement is attached hereto as **Exhibit A.**

7. Pursuant to the Agreement, GPS agreed to process charges on consumers' credit and debit cards for purposes of funding payments by consumers to the Sheriff's Office. After the payments were processed, GPS agreed to forward cash amounts to the Sheriff's Office representing the credit and debit card transactions authorized by the banks and corporate entities that had issued the credit and debit cards processed through the GPS system.

8. Among the "consumers" contemplated in the Agreement, GPS routinely processes bail bond payments, made by or on behalf of arrested or incarcerated individuals in Erie County to the Sheriff's Office.

9. In addition, the Agreement makes GPS responsible for handling all chargebacks and other consumer payment disputes. GPS is financially liable for the reversal of a transaction previously authorized if a consumer can establish that the transaction was not authorized by the consumer but the result of card fraud, theft, or error and GPS either cannot refute such chargeback successfully or chooses for business reasons not to attempt to refute such chargeback.

10. Ordinarily, an individual who is admitted by the court to bail and who posts a sufficient amount of cash in lieu of a bail bond or other form of surety is then released pending his trial. The purpose of the cash payment is to assure the defendant's appearance at any stage of the legal proceedings.

11. If the defendant appears for trial, the Sheriff's Office is required to remit to the defendant the amount of the cash bail on deposit less fees and charges that the Sheriff's

Office is required by statute to retain, such net cash sum to be paid to the defendant by the Sheriff's Office.

12. Upon information and belief, Shane Wilson was arrested on or around March 30, 2015, and bond was set at \$10,000.00 cash. Around the same period, Mr. Wilson posted or had posted on his behalf a \$10,000.00 cash bond to the Sheriff's Office using a stolen credit card.

13. GPS processed the payment for Mr. Wilson in accordance with the terms of the Agreement. In addition to the \$10,000.00 payment due to the Sheriff's Office, the transaction processed through GPS included \$850.00 in service fees added to the transaction by GPS; for a total payment processed of \$10,850.00 of which \$10,000.00 was transferred to the account of the Sheriff's Office and \$850.00 was retained by GPS as compensation for GPS's services in processing the payment. Affidavit of Joseph Hines, attached hereto as Exhibit B.

14. The transaction GPS processed for Mr. Wilson was made using the credit card of Kenneth Lewis, a resident of North Carolina. Exhibit B.

15. On or around May 20, 2015, GPS received notice that Mr. Lewis had disputed the \$10,850.00 charge on his credit card, and Vantiv, Mr. Lewis's credit card processor, processed a first chargeback that day. The reason code for the chargeback provided by the issuing bank was "Fraudulent Transaction." Exhibit B.

16. On June 26, 2015, through a process called "representment," GPS submitted its explanation and supporting documentation demonstrating that the funds related to bail and processing fees were for a legitimate transaction. As a result, the charges were reprocessed to GPS. Exhibit B.

17. In arbitration proceedings within the MasterCard system, Mr. Lewis confirmed to his bank that the transaction had been fraudulent, and that some unknown person (likely, Mr. Wilson or one of his associates) used his credit card for the benefit of Mr. Wilson without his knowledge or permission. As a result Vantiv permanently returned \$10,850.00 to Mr. Lewis's bank on July 14, 2015. Exhibit B.

18. The arbitration outcome represents a final determination from Vantiv, and GPS has no recourse to appeal that decision through Vantiv. Mr. Lewis is now whole, and GPS' only remaining recourse to recover its losses is to appeal to the Court system to return the funds to GPS and not to defendant Mr. Wilson. Exhibit C.

19. Upon information and belief, Mr. Wilson has subsequently appeared in court as required in the criminal case against him, and the bail funds are ready to be released.

20. Upon information and belief, the Sheriff's Office is still in possession of the \$10,000.00 bail bond payment that was processed through GPS for Mr. Wilson.

21. Upon information and belief, Mr. Wilson has no claim, right, or title to, or interest in, any part of the \$10,000.00 cash bail deposit made by Mr. Wilson or on his behalf still in the possession of the Sheriff's Office. In addition, Mr. Wilson has no claim, right, or title to the \$850.00 that GPS charged the cardholder as a processing fee for its services.

22. By operation of New York law, the Sheriff's Office will be required to remit the \$10,000.00 on deposit with its office for the purpose of Mr. Wilson's bail to Mr. Wilson after the disposition of the charges against him.

Disposition of Bailment Property and Restitution

23. GPS incorporates by reference the allegations contained in paragraphs 1-22.

24. Upon information and belief, Mr. Wilson benefitted from the fraudulent conversion of Mr. Lewis's credit through the unauthorized use of Mr. Lewis's credit card to charge his cash bail bond and GPS service fee through GPS, for a total charge of \$10,850.00 (\$10,000.00 in a bond payment, plus \$850.00 in GPS processing fees).

25. The Sheriff's Office is a bailee of the \$10,000.00 that GPS caused to pay to the Sheriff's Office on behalf of Mr. Wilson.

26. GPS has reimbursed the cardholder in the amount of \$10,850.00 (at no expense to the Sheriff's Office), the total amount of the funds he had claimed to be fraudulently obtained using his credit card without his authorization, and the only amount he is entitled to claim as a chargeback under financial industry chargeback rules.

27. As a result of the transfer of \$10,850.00 from GPS' account to reimburse the cardholder for the unauthorized use of his credit card for the posting of bail for Mr. Wilson, GPS is in the position of an interested third party who has in effect been forced unwillingly to post cash bail for Mr. Wilson out of its own funds and for no compensation.

28. On or about June 30, 2015, GPS notified the Sheriff's Office of the unauthorized use of the cardholder's credit card to post cash bail for Mr. Wilson. GPS requested that the cash bail bond payment held by the Sheriff's Office be returned to GPS, rather than remitted to Mr. Wilson.

29. Because Mr. Wilson directly benefitted from the fraudulently charged cash bail bond payment using another's credit card without authorization; and because Mr. Wilson has no claim, right, or title to, or interest in, said funds; and because the cardholder has been reimbursed the full amount of any loss he is allowed under financial industry practices to claim

for the unauthorized use of her credit card, remitting the cash bail bond money to Mr. Wilson would be grossly inequitable and would be counterproductive to the interests of justice.

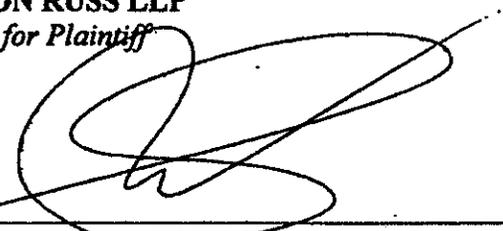
30. To the extent that the Court withholds certain administrative costs from the cash bail bond money, Mr. Wilson would be unjustly enriched if he were not also required to reimburse GPS for the entire amount of his bail bond payment, up to and including \$10,850.00.

31. Finally, GPS has expended significant resources in order to recover these funds. GPS therefore requests that the Court order Mr. Wilson to pay its reasonable attorneys' fees in this matter.

WHEREFORE, for the reasons set forth herein, Plaintiff Government Payment Service, Inc., respectfully requests the Court (1) to order the Sheriff's Office to remit the \$10,000.00 cash bail bond held on deposit by the Sheriff's Office to GPS; (2) to order Mr. Wilson to reimburse GPS \$850.00 for the fees incurred for its processing services, plus any additional fees that the Court withholds from the bail amount; (3) to order Mr. Wilson to pay GPS' reasonable attorneys' fees for the recovery of its property; and (4) to order all other just and proper relief.

DATED: Buffalo, New York
December 18, 2015

HODGSON RUSS LLP
Attorneys for Plaintiff

By: 

Steven W. Wells

The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202
Telephone: (716) 848-1233
E-mail: swells@hodgsonruss.com



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 25, 2016

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

Dear Ms. McCarthy:

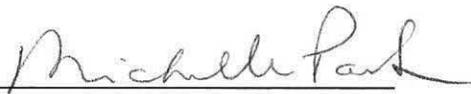
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kelleher, Susan v. Town of Cheektowaga and County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Susan Kelleher 50 Colton Street Cheektowaga, New York 14206
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 M. Parker
First Assistant County Attorney

MMP:dld
Enc.

TITONF

RECEIVED
JAN 25 2016
ERIE COUNTY
DEPARTMENT OF LAW

IN THE MATTER OF THE CLAIM OF:

SUSAN KELLEHER
50 Colton Street
Cheektowaga, NY 14206

Claimant,

-against-

NOTICE OF CLAIM

TOWN OF CHEEKTOWAGA
3301 Broadway
Cheektowaga, NY 14227

COUNTY OF ERIE
Attention County Attorney
95 Franklin Street - Rm 1634
Buffalo, NY 14202

Respondents.

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

1. The name of the Claimant is **SUSAN KELLEHER**, the Claimant resides at 50 Colton Street, Cheektowaga, NY 14206. The attorneys for the Claimant are William K. Mattar, P.C., 6720 Main Street, Suite 100, Williamsville, NY 14221-5986.
2. The nature of the Claim is one to recover damages for personal injuries and conscious pain and suffering, change of lifestyle, loss of enjoyment of life, general and special damages, medical expenses and property damage and all other damages allowed by law resulting

from the injuries suffered by the Claimant, SUSAN KELLEHER, as a result of the negligence of the Town of Cheektowaga and the County of Erie in the design, control, and maintenance and safety of the intersection of Harlem Road near Daniel Ave., Cheektowaga, NY.

3. The incident which forms the basis of the claim herein occurred at approximately 11:25 p.m. on October 24, 2015 in the Town of Cheektowaga, County of Erie and the State of New York. On that date and at that time, the Claimant SUSAN KELLEHER was a pedestrian crossing Harlem Road when a vehicle that was traveling Southbound on Harlem Road, in the Town of Cheektowaga and County of Erie struck pedestrian Susan Kelleher, resulting in her suffering serious bodily injury as defined by NYS Ins. Law §5102(d). See Police Accident Report **Exhibit A.**

4. That as a result of the foregoing, the Claimant SUSAN KELLEHER sustained very serious and substantial injuries, including a fracture of one rib, right side, fracture of base of skull, fracture of one rib, left side, traumatic cerebral edema, cutaneous abscess of abdominal wall, fracture of lower end of right radius and left femur requiring open reduction and internal fixation, multiple facial bone fractures, traumatic pneumothorax, fracture of the fifth lumbar vertebra, cerebrospinal fluid leak, fracture of right clavicle, skull fracture, brain bleed drainage, traumatic brain injury, a long period of unconsciousness, insertion of feeding tube, and other injuries which necessitated emergency medical attention. These injuries may be of a permanent or indefinite duration, and the Claimant SUSAN KELLEHER has been and may be forced to expend sums of money for hospitals, doctors, and other medically related expenses. Other injuries will be disclosed as revealed through diagnosis by treating physicians and other medical personnel.

5. That the said injuries were occasioned solely and wholly as a result of the negligence of the Town of Cheektowaga, and County of Erie, in the design, ownership, maintenance, safety, and management or lack thereof of their crosswalks, streets, and intersection.

WHEREFORE, the Claimant SUSAN KELLEHER requests that this claim be allowed and paid by the Town of Cheektowaga, and County of Erie.

PLEASE TAKE FURTHER NOTICE, that unless said claim is adjusted and paid by the Town of Cheektowaga and/or the County of Erie within thirty (30) days from the date of service of the Notice of Claim, said Claimant intends to commence an action in the Supreme Court of the State of New York against the Respondents, seeking a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest, costs and disbursements.

DATED: Williamsville, New York

January 22, 2016



WILLIAM MATTAR, P.C.

Cheryl M. Reed, Esq.

Attorney for Claimant

Office and P.O. Address

6720 Main Street

Suite 100

Williamsville, NY 14221-5986

(716)633-3535

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

SUSAN KELLEHER, being duly sworn, depose 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.



SUSAN KELLEHER

Sworn to before me this
22 day of January, 2016



Notary Public

Cheryl M. Reed
Notary Public, State of New York
Qualified in Erie County
No. 02RE6220324
My Commission Expires
April 12, 20 17



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

February 3, 2016

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

Dear Ms. McCarthy:

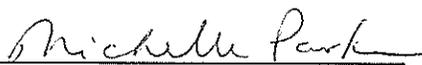
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Santini, Richard v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Richard Santini 4046 Sheldon Road East Aurora, New York 14052
Claimant's attorney:	Lisa A. Poch, 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 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:

RICHARD SANTINI
4046 Sheldon Road
East Aurora, New York 14052

NOTICE OF CLAIM

Claimant,

v.

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

Respondent.

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

PLEASE TAKE NOTICE, that RICHARD SANTINI hereby claims damages against COUNTY OF ERIE, its officers, agents and/or employees, for damages incurred as a result of the wrongful, negligent and careless acts of the respondent, its officers, agents and/or employees on or about November 4, 2015, and in support thereof submits the following:

1. The claimant is RICHARD SANTINI, whose post office address is 4046 Sheldon Road, East Aurora, New York 14052 and telephone number (716) 523-3945.
2. The name of the attorney for the claimant is CHIACCHIA & FLEMING, LLP, Lisa A. Poch, Esq., of counsel, whose post office address is 5113 South Park Avenue, Hamburg, New York, 14075, telephone number (716) 648-3030.

3. Upon information and belief on or about November 4, 2015, RICHARD SANTINI suffered serious bodily injury while driving his motorcycle east on the public roadway Genesee Road in the Village of Springville, Town of Concord, County of Erie, State of New York, when he attempted to make a left turn onto Drake Road and slide on a swath of gravel and/or stone in the roadway, causing his motorcycle to tip sideways and ultimately crash.

4. The Respondent, its officers, agents and/or employees, were negligent, careless and/or reckless as follows: in failing to maintain the public roadway and areas appurtenant thereto in a reasonably safe condition and free of unreasonably hazardous conditions on the referenced public roadway; in failing to correct the defective conditions of the roadway following receipt of written and other notice advising same; in maintaining and/or allowing the roadway to be in disrepair or defective, thereby creating and maintaining a dangerous and hazardous condition to exist; in failing to warn, by sign or other readily visible markings, those lawfully driving on the public roadway of such dangerous and hazardous condition, despite having notice of such foreseeable harm; in failing to properly inspect the roadway for defects; in failing to take reasonable precautions to protect those lawfully driving on the public roadway, specifically RICHARD SANTINI, and prevent such occurrence; in unnecessarily exposing individuals to the harm and the very occurrence complained of by the claimant; in causing, creating and maintaining a dangerous and hazardous situation; in hiring and/or retaining inexperienced and/or improper personnel to repair and/or correct the subject roadway; in failing to adequately supervise personnel charged with repairing and/or correcting the subject roadway; in failing to ensure the subject roadway was repaired and/or corrected in a proper and safe manner; and, otherwise acting in a negligent manner.

5. As a result of the negligence of the Respondent, claimant RICHARD SANTINI, sustained severe bodily injuries to his right shoulder, right arm, back, knees and head.

6. That as a result of the injuries sustained by RICHARD SANTINI, damages have been incurred in an amount to be determined after trial and/or after further analysis of the physical injuries and the costs of treating same.

7. This notice is made and served on behalf of said claimant 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 COUNTY OF ERIE.

Dated: January 28, 2016
Hamburg, New York



RICHARD SANTINI
Claimant



Lisa A. Poch, 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.:

RICHARD SANTINI, 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.



RICHARD SANTINI

Sworn to before me this
28 day of January, 2016



Notary Public

LISA A. POCH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 4/13/2017



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

February 3, 2016

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

Dear Ms. McCarthy:

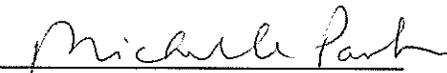
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Burvid, Jodi v. County of Erie, Sheriff Howard and Erie County Sheriff's Office</i>
Document Received:	Verified Petition
Name of Claimant:	Jodi Burvid 4560 Morningside Drive Eden, New York 14057
Claimant's attorney:	Harvey P. Sanders, Esq. Sanders & Sanders 401 Maryvale Drive Cheektowaga, New York 14225

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.

SUPREME COURT OF THE STATE OF NEW YORK
ERIE COUNTY

In the Matter of the Application of

JODI BURVID,

Petitioner,

-against-

ERIE COUNTY and TIMOTHY B. HOWARD,
SHERIFF, ERIE COUNTY SHERIFF'S OFFICE,

Respondents.

For Leave to Serve a Late Notice of Claim

INDEX NO. _____

Filed on _____

VERIFIED PETITION

Petitioner Jodi Burvid, for her verified petition for an Order pursuant General Municipal Law Section 50-e(5), (7) granting leave to serve a late notice of claim, by her attorneys, alleges as follows:

PRELIMINARY STATEMENT

1. Petitioner brings this special proceeding pursuant to General Municipal Law Section 50-e(5), (7) seeking an order granting leave to serve a late notice of claim.
2. A copy of the proposed notice of claim is attached hereto as **Exhibit 1**.

JURISDICTION AND VENUE

3. Pursuant to sections 504 and 506 of the New York Civil Practice Law and Rules, Petitioner commences this action in Erie County because the Respondents are the County and located in Erie County, NY, Petitioner resides in Erie County, NY, and the events occurred in Erie County, NY.
4. Jurisdiction is proper in this Court in accordance with General Municipal Law Section 50-e(7).

THE PARTIES

5. At all relevant times, Petitioner Jodi Burvid has been a citizen of the United States and the State of New York. Petitioner is a female.

6. Respondent County of Erie, including the Erie County Sheriff's Office, is located in the County of Erie. The Erie County Sheriff's Office Holding Center is located at 40 Delaware Ave., Buffalo, NY.

FACTUAL BACKGROUND

7. Petitioner began her full-time employment with Respondent in or about August of 1995 and during the relevant period held the position of Deputy Sheriff at the Erie County Holding Center.

8. Petitioner was discriminated against based on her sex in connection with an incident that occurred on September 23, 2014 at the Erie County Holding Center.

9. Upon Petitioner's arrival to work she entered the locker room and prepared for her shift, as she did every day.

10. Among the things Petitioner brought with her to work that day in her backpack was her lunch bag, her hairbrush, her cell phone, and her cell phone charger, as she did nearly every day.

11. Petitioner brought her lunch in a TOPS Supermarkets plastic grocery bag, as she often did.

12. When emptying her backpack for the beginning of her shift Petitioner's hairbrush, cell phone and charger accidentally fell out of her backpack into her lunch bag.

13. When Petitioner was putting her backpack in her locker, she noticed her hairbrush fell into her lunch bag and removed it.

14. However, Petitioner was unaware that her cell phone and charger had also fallen in her lunch bag. She believed they were still in her backpack.

15. Petitioner's lunch bag contained a full newspaper, a book, various food items, and even a flashlight.

16. Respondent has a policy forbidding cell phones in the secure areas of the holding center.

17. Petitioner was aware of the policy, had always complied with the policy, and intended to on the day in question.

18. Prior to her shift Petitioner did as she always did and placed her lunch bag near the back elevator in the kitchen area to store her lunch prior to the pre-shift lineup.

19. Petitioner then proceeded to the area of the holding center where the lineup occurs.

20. While Petitioner was attending line up, Sergeant Balys found her lunch bag and discovered it contained her cell phone and phone charger.

21. Upon Petitioner's return to the kitchen, she noticed her lunch was gone. The kitchen staff informed her that Sergeant Balys took it back to his office and instructed Petitioner to retrieve it there.

22. Sergeant Balys questioned Petitioner about what was in her lunch bag.

23. She described her lunch, but not her cell phone or charger, since she was unaware they had fallen into her bag.

24. Sergeant Balys eventually gave the lunch bag back to her (without the phone or charger) so she could report for her shift.

25. Petitioner was later directed to collect all of her belongings and was escorted by a sergeant to see Captain Hartman, where she was again questioned about her lunch bag and cell phone.

26. When she was told the phone and charger were in her lunch bag, Petitioner explained to Captain Hartman that she had no knowledge of her cell phone being in her lunch bag. She thought it was in her backpack, which was in her locker.

27. Petitioner was immediately put on administrative leave and ultimately terminated on October 28, 2014.

28. By terminating Petitioner, Respondent treated her differently than any male co-workers who previously had been found in possession of a cell phone in a secure area, none of who were terminated solely for possessing a cell phone.

29. Respondent also treated Petitioner differently than male co-workers who were caught with a cell phone after she was terminated, none of whom were terminated either.

30. Since Petitioner's termination, only other female employees have been fired for the same or similar conduct.

31. Petitioner grieved her termination to arbitration. By decision dated November 6, 2015, Petitioner's termination was affirmed.

REASONS TO GRANT LEAVE TO SERVE A LATE NOTICE OF CLAIM

32. Using the date of termination, October 28, 2014, Petitioner had until January 26, 2015 to serve a notice of claim on the County of Erie regarding sex discrimination.

33. The deadline to serve a summons and complaint on the County of Erie concerning any state law claims expires on January 26, 2016.

34. Petitioner files this petition for leave to serve a late notice of claim in order to preserve her New York State Human Rights Law sex discrimination claim against the County of Erie.

35. Petitioner did not immediately file a notice of claim because she challenged her termination through her collectively bargained for arbitration procedure and expected to get her job back.

36. The reason for the delay in bringing any formal claim separate from the grievance process is that Petitioner did not receive a decision from the Arbitrator until November 6, 2015, over a full year after she was terminated.

37. Following Petitioner's termination on October 28, 2014, she immediately filed a grievance challenging the termination.

38. From the outset, the County of Erie was aware that part of Petitioner's challenge was that her discipline was disparate to that of other males working in the Erie County Holding Center.

39. Petitioner and her Union raised the issue of disparate treatment based on sex in terms of the level of discipline throughout the grievance process.

40. The Union's brief on behalf of Petitioner submitted to the Arbitrator (attached hereto as **Exhibit 2**), which summarized the issues and arguments before the Arbitrator, confirms the issue of disparate treatment was part of the entire grievance process.

41. The brief not only raises the stipulated issue between the parties of whether termination is the appropriate discipline for the alleged act, but specifically identifies multiple instances of male employees who were simply found with a cell phone, nothing more, and were not terminated.

42. Moreover, a Joint Exhibit was entered into the record at the hearing and testimony was taken as to the level of discipline imposed on others who engaged in similar conduct to Petitioner.

43. The County of Erie, in its brief, admitted that it was aware of the disparate treatment Petitioner was subject to. (Attached hereto as **Exhibit 3**)

44. The County of Erie stipulated to the fact that “[p]rior to this case, possession of a cell phone in a secured area (without providing it to an inmate) had never before resulted in termination without progressive discipline.”

45. The County of Erie was well aware of the fact that Petitioner was the only employee terminated for the same or similar conduct at that time and that no male employees were.

46. Moreover, the County of Erie was certainly aware of the same or similar conduct occurring after Petitioner was fired on October 28, 2014 by male employees, and was certainly aware it did not fire those male employees.

47. The County of Erie actually fired other female employees for the same or similar conduct after it fired Petitioner, but has yet to fire any males.

48. Lastly, the Arbitrator himself was aware of the disparate treatment. He addressed it in the summarization of the Union’s position in his Opinion and Award. (Attached hereto as **Exhibit 4**)

49. Petitioner’s grievance was sent to arbitration and a hearing was held on March 10, 2015.

50. The record was closed out on October 5, 2015 and on or about November 6, 2015 the Arbitrator came to a determination affirming Petitioner’s termination.

51. The Arbitrator did not rule on Petitioner's discrimination claim.

RELIEF SOUGHT

52. For the forgoing reasons and the reasons stated in the accompanying memorandum of law, Petitioner respectfully requests leave to serve a late notice of claim for damages resulting in the October 28, 2014 termination.

53. No prior application for the relief requested herein has been made to this Court. WHEREFORE, Petitioner respectfully requests that this Court enter an Order be issued pursuant to General Municipal Law Section 50-e(5), permitting Petitioner Jodi Burvid to serve a late notice of claim regarding alleged sex discrimination and for further and different relief as may be just and proper.

Dated: Cheektowaga, New York
January 22, 2016

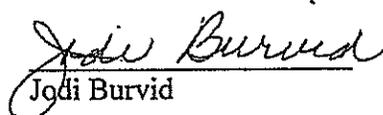
s/Harvey P. Sanders
Harvey P. Sanders, Esq.
Sanders & Sanders
Attorneys for Petitioner
401 Maryvale Drive
Cheektowaga, NY 14225
(716) 839-1489
harvey.sanders@wnyemploymentlaw.com

VERIFICATION

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

JODI BURVID, being duly sworn, deposes and says:

That deponent is the Petitioner in the within action; that deponent has read the foregoing Petition and knows that contents thereof, and that the same is true to deponent's own knowledge, except as to matters stated to be alleged on information and belief, and as to those matters, deponent believes them to be true.


Jodi Burvid

Sworn to before me this 21
day of January, 2016



Notary Public

DAVID DECHELLIS
NOTARY PUBLIC, STATE OF NEW YORK
ERIE COUNTY
REG. NO. 02DE6302645
COMM. EXP. 05/05/2018



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

February 4, 2016

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

Dear Ms. McCarthy:

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

File Name:	<i>Cedeno, Kimberly v. Erie County Probation Department</i>
Document Received:	NYS Div of Human Rights Charge of Discrimination
Name of Claimant:	Kimberly Cedeno 216 LaSalle Kenmore, New York 14217
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

KIMBERLY CEDENO,

Complainant,

v.

ERIE COUNTY, PROBATION DEPARTMENT,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.
10179642

Federal Charge No. 16GB601376

I, Kimberly Cedeno, residing at 216 LaSalle, Kenmore, NY, 14217, charge the above named respondent, whose address is One Niagara Plaza, 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 national origin, sex, race/color.

Date most recent or continuing discrimination took place is 1/27/2016.

The allegations are:

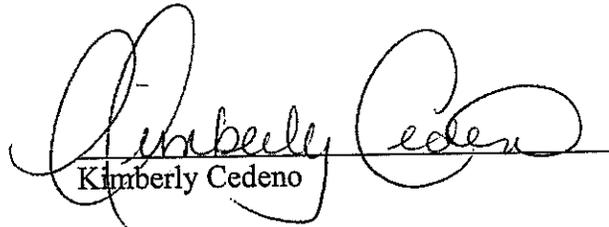
1. I am a female and Puerto Rican (Hispanic). Because of this, I have been subject to unlawful discriminatory actions.
2. Since 2011 and the appointment of Commissioner Brian McLaughlin I have been subjected to disparate treatment in the terms and conditions of my employment. On April 6, 2015, I requested access to an onsite gun locker to store my service weapon. It was known that my son has a drug addiction and items of value were disappearing from my home. My request was denied. Officer Jeff Durski and Glenn Rightmyer are male, white officers who have access to onsite gun lockers.
3. I am the power of attorney for an incarcerated Puerto Rican male friend. My employer is aware of this fact and since 2013 has unfairly targeted me for scrutiny and discipline. Other officers who are white and have relationships with people who are incarcerated or have contact with the criminal justice system have not been treated the same.
4. On September 20, 2013 and August 21, 2015, I was suspended for several levels of alleged misconduct. Prior to each date, I did not receive any verbal or written warnings on the the allegations listed on the respective suspension memos.
5. On January 27 2016, Respondent terminated my employment. In addition, Respondent took the unusual step of obtaining my personal phone records to support its termination of my employment. Officer Laurie McHenry (White) and Officer Scott Harmon

(White) were involved in an intimate relationship and their break-up led to charges being filed because McHenry destroyed Harmon's office. Both officers remain employed.

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

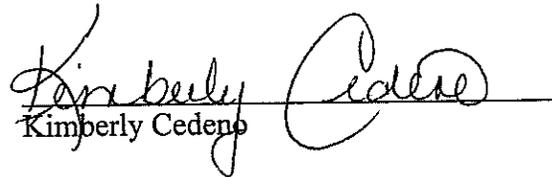
I also charge the above-named respondent with violating Title VII of the Civil Rights Act of 1964, as amended (covers race, color, creed, national origin, sex relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

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


Kimberly Cedeno

STATE OF NEW YORK)
COUNTY OF) SS:

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


Kimberly Cedeno

Subscribed and sworn to
before me this 1st day
of February, 2016


Signature of Notary Public

TASHA E. MOORE
Notary Public - State of New York
No. 02M06032442
Qualified in Erie County
Commission Expires on November 1, 2017



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

February 8, 2016

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

Dear Ms. McCarthy:

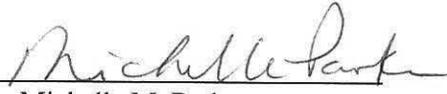
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Lahrs, Eric and Michelle v. City of Buffalo, County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Eric and Michelle Lahrs 1421 Transit Road Orchard Park, New York 14127
Claimant's attorney:	Richard S. Binko, Esq. Law Offices of Richard S. Binko 2427 William Street Cheektowaga, New York 14206

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

ERIC LAHRS and
MICHELLE LAHRS
1421 Transit Road
Orchard Park, New York 14127
Claimant,

This paper received at the
Erie County Attorney's Office
from David Bigler on
the 19th day of January, 2016
at 2⁰⁰ a.m./p.m.
Martin A. Pslowy
Assistant County Attorney

-vs-

NOTICE OF CLAIM

CITY OF BUFFALO
City Hall
65 Niagara Square
Buffalo, New York 14202

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202
Respondents.

PLEASE TAKE NOTICE that pursuant to General Municipal Law §50(e) the claimants, ERIC LAHRS and MICHELLE LAHRS, hereby make a claim against the CITY OF BUFFALO and the COUNTY OF ERIE, and in support of such claim does state the following:

1. My post office address is 1421 Transit Road, Orchard Park, New York 14127.
2. My attorney is the Law Office of Richard S. Binko, 2427 William Street, Cheektowaga, New York 14206.
3. The nature of this claim is tort for negligence and false arrest due to a personal injury by virtue of an arrest.
4. The facts and circumstances arising out of this claim in the above entitled action are as follows:
That on or about November 17, 2015 at about 10:00 p.m. the claimant, ERIC LAHRS, was unlawfully arrested for no reason sustaining serious injuries as herein alleged due to the negligence of the respondents.
5. Upon information and belief, the negligence of the respondents is in failing to properly process paperwork resulting in a false arrest; and were otherwise careless and negligent.
6. That by reason of the premises, the Claimant, ERIC LAHRS, has been and will be

caused to expend large sums of money for medical bills, sustained damages due to permanent and progressive injuries, all to the Claimants, damage pursuant to General Municipal Law §50(e) and CPLR §3017(c).

7. That by reason of the premises, the Claimant MICHELE LAHRS has lost the services and consortium of her husband, ERIC LAHRS, all to the Claimants damages pursuant to General Municipal Law §50(e) and CPLR §3017(c).

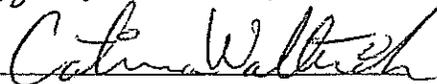
8. That the amount of damages sought by the Claimants exceed the jurisdictional limits of all lower courts, and that this action is properly brought in the Supreme Court of Erie County, New York, pursuant to CPLR §3017(c).

WHEREFORE, Claimants request that the claim be allowed and paid for by the CITY OF BUFFALO and the COUNTY OF ERIE.


ERIC LAHRS


MICHELLE LAHRS

Sworn to before me this
28th day of December, 2015.



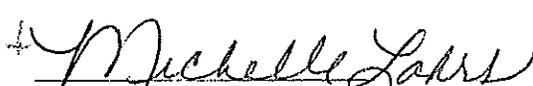
CATRINA WALTERICH
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXP. OCT. 06, 2019

STATE OF NEW YORK
COUNTY OF ERIE SS:

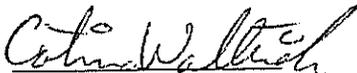
ERIC LAHRS and MICHELLE LAHRS, being duly sworn deposes and says:

We are the Claimants in the above entitled action; we have read the foregoing Notice of Claim and know the contents thereof that the same is true to our knowledge, except as to those matters therein alleged upon information and belief, and that as to those matters we believe them to be true.


ERIC LAHRS


MICHELLE LAHRS

Sworn to before me this
28th day of December, 2015.



CATRINA WALTERICH
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXP. OCT. 03, 2019



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

February 9, 2016

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

Dear Ms. McCarthy:

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

File Name:	<i>Miska, Steven v. County of Erie and Town of Hamburg</i>
Document Received:	Notice of Claim
Name of Claimant:	Steven Miska 15 North Shore Drive Blasdell, New York 14219
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enc.

STATE OF NEW YORK
SUPREME COURT: ERIE COUNTY

R E C E I V E D
FEB 08 2016
ERIE COUNTY
DEPARTMENT OF LAW
Jamp

IN THE MATTER OF THE CLAIM OF:
STEVEN MISKA

Claimant,

v.

NOTICE OF CLAIM

THE COUNTY OF ERIE and
THE TOWN OF HAMBURG,

Respondents.

To: THE TOWN OF HAMBURG
6100 South Park Ave,
Hamburg, NY 14075

COUNTY OF ERIE
95 Franklin Street, Room 1634
Buffalo, New York 14202

This paper received at
Erie County Clerk's Office
on the 5th day of Feb 20 2016
at 10:03 a.m. p.m.
by *[Signature]*
Deputy Clerk

PLEASE TAKE NOTICE that the undersigned, STEVEN MISKA, makes claims and demands against the Town of Hamburg and the County of Erie as follows:

1. The name and post office address of the Claimants and their attorneys are:

CLAIMANTS:
Steven Miska
15 North Shore Drive
Blasdell, New York 14219

ATTORNEY:

2. The claim of STEVEN MISKA is for personal injuries and for damages through the negligence of the COUNTY OF ERIE and/or THE TOWN OF HAMBURG.

3. The incident giving rise to this claim occurred on or about November 7, 2015 at Bayview Road in the Town of Hamburg, County of Erie.

4. The claim for personal injuries and damages including lost and/or reduced earnings, medical expenses, as well as pain and suffering, arose in the following

manner: the Claimant, STEVEN MISKA, was operating his motorcycle on or about the 7th day of November 2015, when his vehicle was caused to slip on loose gravel on the roadway and tipped over, sliding approximately 40 feet after making a turn from Hoover Road on to Bayview Road.

5. As a result of said incident, the Claimant, STEVEN MISKA, sustained personal injuries due to the negligence of the Respondents, the TOWN OF HAMBURG and the COUNTY OF ERIE, and their agents, servants, and/or employees in that the Respondents failed: (1) to provide sufficient warning to motorists that they are approaching loose gravel; (2) to inspect and maintain the roadway in proper condition; and (3) other acts of negligence that may be discovered.

6. The Claimant, STEVEN MISKA, also alleges that the TOWN OF HAMBURG and the COUNTY OF ERIE, and their agents, servants, and/or employees knew or should have known about the unsafe conditions and dangerous conditions present on said roadway owned, operated and/or maintained by Respondents and their agents.

7. As a result of the aforementioned negligence of the Respondents, the TOWN OF HAMBURG and the COUNTY OF ERIE, their agents, employees, and/or servants, the Claimant, STEVEN MISKA, suffered the following injuries, including, but not limited to: (1) right hip/thigh bruise; (2) neck injury; (3) back injury; (4) injuries to the left wrist; (5) head injury; (6) injuries to left shoulder; and (7) other injuries as listed in his medical records.

8. As a result of the serious injuries sustained, Claimant, STEVEN MISKA, was compelled, and may be compelled to expend, sums of money for medical care and treatment, medicines, in effecting his rehabilitation.

9. The undersigned therefore presents this claim for adjustment in payment, and notifies you, that unless it is adjusted, compromised and/or paid within the time provided by law from the date of its presentation to you, the undersigned will commence an action thereon.

WHEREFORE, the Claimant, STEVEN MISKA, hereby claims and demands from the Respondents, the TOWN OF HAMBURG and the COUNTY OF ERIE, compensation for the damages sustained by reason of the wrongful, unlawful, negligent, careless acts and omissions of the Respondents, their agents, servants, and/or employees.

Dated:

2/1/16

By: _____

STEVEN MISKA

Claimant



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

February 10, 2016

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

Dear Ms. McCarthy:

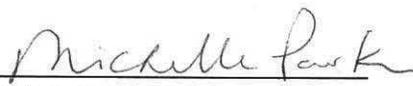
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Bryant, Melinda v. County of Erie</i>
Document Received:	NYS Division of Human Rights Charge of Discrimination
Name of Claimant:	Melinda L. Bryant PO Box 84 Buffalo, NY 14201
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enc.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

MELINDA L. BRYANT,

Complainant,

v.

ERIE COUNTY, DEPARTMENT OF SOCIAL
SERVICES,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.
10179595

Federal Charge No. 16GB601339

I, Melinda L. Bryant, residing at P.O. Box 84, Buffalo, NY, 14201, charge the above named respondent, whose address is 95 Franklin St., 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 race/color.

Date most recent or continuing discrimination took place is 11/30/2015.

See attached complaint.

SUMMARY

OCSE has a consistent pattern of refusing to promote well qualified and eligible African Americans to the senior child support investigator position. Persons with far less experience than my 16 years of child support experience and 21 years of County seniority are regularly appointed:

	<u>Approx Seniority</u>		<u>Appointment</u>
Danielle Abraham	5	Caucasian	Prov → Perm 5/4/15
Frederick Collins	15	Caucasian	Permanent 5/4/15
Christa Dake	10	Caucasian	Permanent 11/30/15
John Kotaska	10	Caucasian	Provisional 2014
Tina Maglietto	10	Caucasian	Provisional 2014
Tricia Moorhouse	15	Caucasian	Prov → Perm 5/4/15
Sherrie Sieminski Grabowski	5	Caucasian	Permanent 5/4/15
Cheryl Wailand	15	Caucasian	Permanent 5/4/15

LaShawn Chinn and I were not offered a provisional appointment although she scored 90 and I 85 on the most recent qualifying list established on March 11, 2015.

The senior child support position may not been offered to me because of my February 20, 2013 and June 22, 2014 emails to the local CSEA Social Service Unit plus written inquiries to Erie County Personnel, Regional CSEA Labor Relations and Erie County Equal Employment Opportunity.

Despite actions detailed below, OCSE management's unfair labor practices continue. A proper resolution to my complaint is promotion to the senior child support investigator position plus grade 8 salary payment from the date of the first provisional appointment since the October 3, 2009 exam. My qualifying score for that senior child support investigator exam was also 85.

July 1999 – Present

My service as a child support investigator includes the following areas: customer service, enforcement, establishment and special projects. (See May 6, 2015 email to the Operations Manager, VICTORIA LEONE; Director of OCSE, KELLY GALLAGHER; and Legal Affairs Director, MARNI BOGART.

While KELLY GALLAGHER and MARNI BOGART responded to the May 6, 2015 email, VICTORIA LEONE has not.

February 20, 2013

On February 20, 2013, VICTORIA LEONE charged me in the elevator area of the 7th floor of the Rath Building. This incident was reported to the then CSEA Social Service Section President, Kevin Kumor.

As of this date, actions taken by OCSE administration and CSEA are unknown.

Is VICTORIA LEONE's refusal to promote me retaliation?

June 21, 2014

Article XXVIII Section 28.5b (page 41) of the CSEA Collective Bargaining Agreement (CBA) addresses noncompetitive class promotions. It states "... ***where qualifications are substantially equal among such applicants, length of service with the County shall be controlling ...***"

On June 22, 2014, I notified the local CSEA Social Service Section that the above CBA was violated when provisional senior child support investigators with lower County seniority were selected – Danielle Abraham and Tricia Moorhouse. African Americans Melinda Bryant, LaShawn Chinn, Annette Cole and Michelle Mosely were not provisionally appointed. The CSEA Social Service Section President (Agnes Mabins) replied on July 6, 2014 that the CBA had not been violated.

On March 11, 2015, the qualifying list for the senior child support investigator was established. After the rule of 3 was followed, the next qualifying score was 85.

May 5, 2015

OCSE's operation manager (VICTORIA LEONE) announced on May 5, 2015 the appointment of 3 senior child support investigators who also scored 85, but have less than my 21 years of County seniority and 16 years of experience with the child support unit - Danielle Abraham, Tricia Moorhouse, and Sherrie Sieminski-Grabowski.

African American LaShawn Chinn scored 90. As of this writing, she has not been offered the senior child support investigator position.

May 6, 2015

My May 6, 2015 email to VICTORIA LEONE, KELLY GALLAGHER and MARNI BOGART reiterated my OCSE experience. During my face to face informal conversation with MARNI BOGART, I asked, 'Does VICTORIA LEONE's May 5, 2015 email indicate that I have been denied a promotion for the third time despite my seniority and experience?' The legal director stated the selection process was not complete.

July 6, 2015

Although no formal announcement has been made as of this writing, 2 additional persons who scored 85 were appointed senior child support investigators on approximately July 6, 2015 - Linda Hamilton and MaraLouise Jarosz.

It is my understanding that Linda Hamilton was offered and declined the provisional senior child support investigator position twice. It is also my understanding that the selection process was halted until Linda Hamilton agreed to specific terms of acceptance – the ability to take time off during the summer while technically working the mandatory 9-5 shift and shortened length of probation.

July 15, 2015

My email to the County personnel commissioner, David Palmer requested an explanation of the role of score, seniority and experience in the appointment of senior child support investigators

July 24, 2015

The County personnel commissioner's reply did not address the role of seniority and experience, acknowledge the past practice of appointment according to seniority or explain how OCSE's selection process complied with unbiased and fair civil service practices.

July 27, 2015

Mindy Czechowski, the classification and compensation chief's email also failed to answer my direct question regarding seniority.

September 16, 2015

While Ann Marinoff trained new County employees, she told them, "You need to be careful about her. She is mad she was denied a promotion because she has absolutely no interpersonal skills whatsoever." (Ann Marinoff was appointed to the senior child support investigator position per VICTORIA LEONE's May 5, 2015 email.)

I reported the disparaging remark to my immediate supervisor, Tommie Parker and MARNI BOGART, the director of legal affairs on Monday, September 21, 2015.

November 16, 2014

I filed a discrimination complaint with the Erie County Equal Employment Opportunity Office.

November 30, 2015

Although there has been no formal announcement as of this writing, Christa Dake began the duties of a senior child support investigator on November 30, 2015. Ms. Dake's appointment is the most recent example of OCSE's pattern of refusing to promote better qualified and eligible African Americans.

Prior to the March 11, 2015, qualifying list for the senior child support investigator position, Ms. Dake was offered but declined the provisional position. Ms. Dake took the test once and was appointed senior child support investigator. I took the senior child support investigator examination twice, scored 85 on each one, and have not been offered an appointment.

Ms. Dake began her county service approximately 10 years ago with OCSE as a data entry operator. My county service began in 1994 as a social welfare examiner. Since Ms. Dake's appointment to the child support investigator position, she has served only in enforcement. Since July 1999, I have served in customer service, enforcement, establishment and special projects.

December 7, 2015

Equal Employment Opportunity (EEO) Investigators Glenn E Belton (858-8604) and Lynn Kolodziej (858-7554) met with me to discuss my complaint, rights and responsibilities plus receive the attached information.

January 14, 2016

The above EEO Investigators informed me that they were unable to resolve the above issue with VICTORIA LEONE and KELLY GALLAGHER. They provided the attached "Notice of Right to File a Formal Complaint after the Completion of EEO Informal Complaint Counseling".

January 27, 2016

The proper resolution to my complaint is promotion to the senior child support investigator position plus grade 8 salary payment from the date of the first provisional appointment since the October 3, 2009 exam.



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

February 17, 2016

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

Dear Ms. McCarthy:

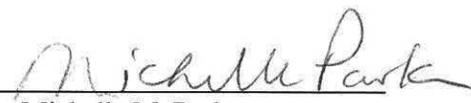
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Erie County Sheriff's PBA v. Sheriff Howard, County of Erie and Alan Rozansky</i>
Document Received:	Summons and Complaint
Name of Claimant:	Erie County Sheriff's Police Benevolent Association, Inc.
Claimant's attorney:	Paul D. Weiss, Esq. Bartlo, Hettler, Weiss & Tripi 22 Victoria Boulevard Kenmore, New York 14217-2314

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**

S U M M O N S

**ERIE COUNTY SHERIFF'S
POLICE BENEVOLENT ASSOCIATION, INC.**
PO Box 932
Orchard Park, NY 14127

Index No. 800976/2016

Plaintiff

-against-

**TIMOTHY B. HOWARD, as
SHERIFF OF ERIE COUNTY**
10 Delaware Ave
Buffalo, NY 14202

COUNTY OF ERIE
95 Franklin Street
Buffalo, NY 14202

ALAN ROZANSKY
10 Sterling Place
Lancaster, NY 14086

Defendants.

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the plaintiffs' attorney, at the address stated below, a written Answer to the attached Complaint for Declaratory Judgment.

If this Summons is served upon you within the State of New York by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York you must respond within THIRTY (30) days after service is completed, as required by law.

If you do not respond to the attached Complaint within the applicable time limitation stated above, a judgment will be entered against you, by default, for the relief demanded in the Complaint, without further notice to you.

This action is brought in the County of Erie by reason of:

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

**ERIE COUNTY SHERIFF'S POLICE
BENEVOLENT ASSOCIATION, INC.**

Plaintiff,

-against-

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT**

**TIMOTHY B. HOWARD, as
SHERIFF OF ERIE COUNTY,**

Index No. 800976/2016

COUNTY OF ERIE, and

ALAN ROZANSKY,

Defendants.

Plaintiff, the Erie County Sheriff's Police Benevolent Association, Inc. ("ECS PBA") by way of complaint against defendants, Timothy B. Howard ("Howard" or "Sheriff"), in his capacity as Sheriff of Erie County, the County of Erie ("County"), and Alan Rozansky ("Rozansky") (collectively "Defendants") allege as follows:

Introduction

1. This is an action for declaratory judgment brought under CPLR §§ 3001 and 3017(b) to settle a dispute that has arisen regarding the rights of the plaintiff under New York State County Law, §652, the Erie County Charter Article 21, the Erie County Administrative Code, §15, et seq., New York State Civil Service Law, §61, and other relevant laws and regulations.

2. ECS PBA and the defendants County and Rozansky are parties to a collective bargaining agreement covering the terms and conditions of employment of unit members effective January 1, 2002 through December 31, 2016 (the "CBA").

3. Pursuant to Section 204.1 of Chapter 392 of the Law of 1967 as amended (hereinafter the "Act"), Plaintiff ECS PBA is the duly recognized sole and exclusive negotiating representative for an employee unit including all, but not limited to: full time employees in the criminal division, including: deputy sheriff-criminal, deputy sheriff-criminal (Spanish speaking); deputy sheriff-criminal (Seneca speaking); tactical flight officer; undercover narcotics deputy; detective deputy; detective deputy arson; technical sergeant; sergeant-criminal; senior tactical flight officer; training director; senior detective narcotics; coordinator-domestic violence; lieutenant-criminal; captain-criminal; deputy sheriffs assigned to the "Rath Patrol."

4. Defendant, Timothy B. Howard, in his capacity as the Sheriff of Erie County, is the chief elected law enforcement official in Erie County and is responsible for the enforcement of federal and state civil and criminal laws and county, town, and village ordinances through the provision of police and patrol services, crime investigation, crime prevention programs, and public safety and emergencies services.

5. Defendant, County of Erie, is a domestic municipal corporation exercising such powers and discharging such duties as may be imposed or conferred upon it by the Erie County Charter and New York state municipal home rule law.

6. Defendant Alan Rozansky at all relevant times was and is a Senior Detective Narcotics employed by the Sheriff.

7. As a Senior Detective Narcotics, Rozansky was and is at all relevant times a member of the ECS PBA.

8. Although Rozansky is a dues-paying member of the ECS PBA, his interests are adverse to those of the Plaintiff ECS PBA.

9. Rozansky is a necessary party to the instant litigation, as an effective judgment may not be rendered in his absence.

10. Prior to February 3, 2015, all ECS PBA members holding the position of Senior Detective Narcotics were in Pay Grade 10.

11. On or about February 3, 2015, by means of Special Order 2015-02, the Sheriff unilaterally changed the salary grade of Senior Detective Narcotics Rozansky from Pay Grade 10 to Pay Grade 11 without negotiating same with the ECS PBA. A copy of Special Order 2015-02 dated February 3, 2015 is attached hereto as Exhibit A.

12. Following this unilateral action by the Sheriff, the other ECS PBA member who held the position of Senior Detective Narcotics remained at Pay Grade 10, as indicated in the Erie County Adopted Budget, Fiscal Year 2015, page 249, a copy of which is attached hereto as Exhibit B.

13. As such, only Senior Detective Narcotics Rozansky was rewarded by the Sheriff's action in unilaterally upgrading Rozansky from Pay Grade 10 to Pay Grade 11.

14. Erie County Charter, Article 21, §2103(a) provides that employees of the Erie County Sheriff's Office ("ECSO") shall be in the classified service under the provisions of the civil service law of the state of New York.

15. Among the civil service laws that Erie County and the Sheriff must obey are following the proper procedures for promotion to designating titles, including the submission of a PO-1 form.

16. While the Sheriff characterized this unilateral change as a “promotion” from Senior Detective Narcotics to “Chief” (See Exhibit A), in fact neither the Sheriff nor Erie County submitted a PO-1 form required for the promotion.

17. The Sheriff and Erie County’s own documents reveal that there was no “promotion,” but merely a unilateral Pay Grade change by the Sheriff.

18. In fact, the ECS PBA continues to receive dues for Rozansky, even though the title Chief is an exempt title in the Erie County Sheriff’s Office and no other Chief in the ECSO is an ECS PBA member.

19. On March 3, 2015, pursuant to a document request sent by the ECS PBA, ECSO Chief of Administrative Services John W. Greenan provided documentation including a screen shot of the Sheriff’s computer system showing the administrative action relative to Rozansky being merely an upgrade in pay grade from Grade 10 to Grade 11, not a *bona fide* promotion. A copy of the screen shot is attached hereto as Exhibit C.

20. The ECS PBA subsequently commenced an Improper Practice with the New York State Public Employment Relations Board (“PERB”).

21. The ECS PBA, the ECSO and the County resolved the improper practice issues under the jurisdiction of PERB. The resolution through PERB was limited to those issues solely under PERB’s jurisdiction and did not resolve the issues raised by the instant complaint.

22. Since there is no evidence of the proper creation of the new position of Chief of the Narcotics Division and the proper promotion of Rozansky to that title, there remains outstanding the issue as to the authority of the Sheriff to unilaterally create any position and the proper promotion of an individual to that position without following the requirements of New York State County Law §652, the Erie County Charter Article 21, the Erie County Administrative Code §15, et seq., and New York State Civil Service Law §61.

23. The instant Declaratory Judgment action is brought to determine the rights and relationships of the parties with respect to these provisions of State and County Law, State Civil Service Law, the County of Erie Charter and County of Erie Administrative Code.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

24. Plaintiff ECS PBA repeats and realleges the allegations set forth in Paragraphs 1-23 as if each allegation were set forth in full herein.

25. As a result of the unilateral change in Pay Grade by the Sheriff, a dispute has arisen between the plaintiff and the defendants.

26. Declaratory judgment is necessary to determine the rights and relationships of the parties under State and County Law and State Civil Service Law.

27. Declaratory judgment is the proper way to test the validity of legislative enactments or rules affecting the appointment of police officers. Miller v. Braun, 453 N.Y.S.2d 504 (4th Dept. 1982).

28. Likewise, declaratory judgment is an appropriate means to determine rights and relationships under a CBA regarding the promotion of particular employees. Spegele v. Williams, 131 A.D.2d 831 (2d Dept. 1987).

**AS AND FOR A FIRST CAUSE OF ACTION
DEFENDANTS ARE IN VIOLATION OF NEW YORK STATE COUNTY LAW**

29. Plaintiff ECS PBA repeats and realleges the allegations set forth in Paragraphs 1-28 as if each allegation were set forth in full herein.

30. It is respectfully submitted that defendants violated New York State County Law §652 when they failed to file and record the appointment of Rozansky to “Chief” of the Narcotics Division in the office of the county clerk.

31. New York State County Law Article 17, §§650-662, sets forth the duties prescribed by law of the sheriff as an officer of the court and conservator of the peace within the county.

32. New York State County Law §652(2) permits the sheriff to appoint “as many regular deputy sheriffs as he may deem proper” as well as to appoint “keepers, guards, clerks and employees as may be authorized by the board of supervisors and such appointees shall serve during his pleasure.”

33. New York State County Law §652(3) mandates that each appointment to the Sheriff’s staff “shall be in a writing filed and recorded in the office of the county clerk.”

34. There is no evidence that such writing was filed in compliance with County Law §652(3).

35. Defendants are in clear violation of the County Law, as their purported appointment has not been properly recorded, rendering it a nullity.

36. As such, the Court should declare that Rozansky remains at official title of Senior Detective Narcotics.

**AS AND FOR A SECOND CAUSE OF ACTION
DEFENDANTS ARE IN VIOLATION OF THE ERIE COUNTY CHARTER**

37. Plaintiff ECS PBA repeats and realleges the allegations set forth in Paragraphs 1-36 as if each allegation were set forth in full herein.

38. Defendants' actions violate relevant provisions of the Erie County Charter governing the proper procedures for promotion to designated titles.

39. The Erie County Charter is the governing law of the County of Erie and sets forth the form of County government and the powers and duties of the County's officers, including the Sheriff.

40. Erie County Charter, Article 21, §2103(a) provides: "The deputies and employees of the Erie county sheriff's department shall be in the classified service under the provisions of the civil service law of the state of New York, and shall be subject to and governed by the rules and regulations of the New York state department of civil service."

41. Among the civil service laws that Erie County and the Sheriff must obey are following the proper procedures for promotion to designated titles.

42. The Erie County civil service rules list Chief Deputy-Narcotics as a policy title under non-competitive positions. Appendices to Rules, Amended to May 14, 2004, Appendix B, Non-Competitive Positions, Erie County Services, p. 33, attached in relevant part hereto as Exhibit D.

43. This policy title is not simply an internal title, but rather, an official designation.

44. Therefore, official procedures set forth in the Erie County Charter must be followed when promoting an individual to the position of Chief Deputy Narcotics.

45. In the instant case, the defendants failed to follow official procedures for promotion when they unilaterally changed Rozansky's Pay Grade from 10 to 11 and upgraded his title from Senior Detective Narcotics to "Chief" of the Narcotics Division by means of Special Order 2015-02 (See, Exhibit A) without negotiating same with the ECS PBA.

46. As such, the defendants were in violation of the Erie County Charter, and the Court should declare that Rozansky remains at official title of Senior Detective Narcotics.

**AS AND FOR A THIRD CAUSE OF ACTION
DEFENDANTS ARE IN VIOLATION OF THE ERIE COUNTY
ADMINISTRATIVE CODE**

47. Plaintiff ECS PBA repeats and realleges the allegations set forth in Paragraphs 1-46 as if each allegation were set forth in full herein.

48. It is respectfully submitted that the defendants violated the Erie County Administrative Code when they failed to file the appointment of Rozansky to "Chief" of the Narcotics Division with the county clerk.

49. The Erie County Administrative Code provides the structure for operations of county offices, including the Erie County Sheriff's Office.

50. Erie County Administrative Code §15.03 (a) provides: "The sheriff shall appoint an undersheriff and may appoint such deputies, other clerks and employees within the limits of the appropriations therefore, as he deems necessary for the conduct of his office."

51. Erie County Administrative Code §15.03 (e) requires that each appointment by the Sheriff “shall be in writing and filed in the office of the county clerk.”

52. There is no evidence that such writing was filed in compliance with Erie County Administrative Code §15.03 (e).

53. Defendants are in clear violation of the County Administrative Code, as their purported appointment has not been properly recorded, rendering it a nullity.

54. As such, the Court should declare that Rozansky remains at official title of Senior Detective Narcotics.

**AS AND FOR A FOURTH CAUSE OF ACTION
DEFENDANTS ARE IN VIOLATION OF NEW YORK CIVIL SERVICE LAW**

55. Plaintiff ECS PBA repeats and realleges the allegations set forth in Paragraphs 1-54 as if each allegation were set forth in full herein.

56. It is respectfully submitted that the defendants violated New York Civil Service Law when they unilaterally changed Rozansky’s title to “Chief” of the Narcotics Division without following the proper civil service procedure.

57. New York Civil Service Law §61(2) prohibits appointments or promotions in absence of the appointing authority following the proper civil service procedure, even for exempt positions.

58. Civil Service Law §61(2) provides in pertinent part: “no person shall be assigned to perform the duties of any position unless he has been duly appointed, promoted, transferred or reinstated to such position in accordance with the provisions of this chapter and the rules prescribed thereunder.”

59. In the instant case, Defendants have not duly “appointed, promoted, transferred or reinstated” Defendant Rozansky to Chief of the Narcotics Division. As such, Defendant Rozansky remains a Senior Detective Narcotics.

60. As such, Defendants were in violation of the New York Civil Service Law and the Court should declare that Rozansky remains at official title of Senior Detective Narcotics.

**AS AND FOR A FIFTH CAUSE OF ACTION
DEFENDANTS ARE IN VIOLATION OF NEW YORK CIVIL SERVICE LAW**

61. Plaintiff ECS PBA repeats and realleges the allegations set forth in Paragraphs 1-60 as if each allegation were set forth in full herein.

62. Civil Service Law §61(2) provides in pertinent part: “no person shall be assigned to perform the duties of any position unless he has been duly appointed, promoted, transferred or reinstated to such position in accordance with the provisions of this chapter and the rules prescribed thereunder.”

63. In the alternative, should it be declared that Defendants Sheriff and County duly “appointed, promoted, transferred or reinstated” Defendant Rozansky to Chief of the Narcotics Division, he is performing the same work as he performed as a Senior Detective Narcotics.

64. Civil Service Law §61(2) prohibits Defendants Sheriff and County from assigning Defendant Rozansky from performing the duties of Senior Detective Narcotics, a position for which he has no longer been duly appointed.

65. As such, the defendants were in violation of the New York Civil Service Law, and the Court should direct the defendants to formally acknowledge that Rozansky remains at official title of Senior Detective Narcotics.

66. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs demand judgment against the defendants as follows:

AS AND FOR THE FIRST CAUSE OF ACTION

1. Directing the defendants to formally acknowledge that Rozansky remains at official title of Senior Detective Narcotics.
2. Directing the defendants to cease and desist paying Rozansky the salary increases ordered on February 3, 2015.
3. In the alternative, direct Defendants Sheriff and County to cease and desist from assigning Defendant Rozansky to performing the work of Senior Detective Narcotics in violation of Civil Service Law §61.
4. For such other further and different relief as to the Court may seem just and proper in the circumstances, together with the costs and disbursements of this action.

AS AND FOR THE SECOND CAUSE OF ACTION

1. Directing the defendants to formally acknowledge that Rozansky remains at official title of Senior Detective Narcotics.
2. Directing the defendants to cease and desist paying Rozansky the salary increases ordered on February 3, 2015.
3. In the alternative, direct Defendants Sheriff and County to cease and desist from assigning Defendant Rozansky to performing the work of Senior Detective Narcotics in violation of Civil Service Law §61.

4. For such other further and different relief as to the Court may seem just and proper in the circumstances, together with the costs and disbursements of this action.

AS AND FOR THE THIRD CAUSE OF ACTION

1. Directing the defendants to formally acknowledge that Rozansky remains at official title of Senior Detective Narcotics.

2. Directing the defendants to cease and desist paying Rozansky the salary increases ordered on February 3, 2015.

3. In the alternative, direct Defendants Sheriff and County to cease and desist from assigning Defendant Rozansky to performing the work of Senior Detective Narcotics in violation of Civil Service Law §61.

4. For such other further and different relief as to the Court may seem just and proper in the circumstances, together with the costs and disbursements of this action.

AS AND FOR THE FOURTH CAUSE OF ACTION

1. Directing the defendants to formally acknowledge that Rozansky remains at official title of Senior Detective Narcotics.

2. Directing the defendants to cease and desist paying Rozansky the salary increases ordered on February 3, 2015.

3. In the alternative, direct Defendants Sheriff and County to cease and desist from assigning Defendant Rozansky to performing the work of Senior Detective Narcotics in violation of Civil Service Law §61.

4. For such other further and different relief as to the Court may seem just and proper in the circumstances, together with the costs and disbursements of this action.

AS AND FOR THE FIFTH CAUSE OF ACTION

1. Directing the defendants to formally acknowledge that Rozansky remains at official title of Senior Detective Narcotics.

2. Directing the defendants to cease and desist paying Rozansky the salary increases ordered on February 3, 2015.

3. In the alternative, direct Defendants Sheriff and County to cease and desist from assigning Defendant Rozansky to performing the work of Senior Detective Narcotics in violation of Civil Service Law §61.

4. For such other further and different relief as to the Court may seem just and proper in the circumstances, together with the costs and disbursements of this action.

Dated: Kenmore, New York
January 25, 2016

s/Paul D. Weiss
Paul D. Weiss, Esq., of Counsel
Adam J. Wolkoff, Esq., of Counsel
BARTLO, HETTLER, WEISS & TRIPI
Attorneys for the Plaintiffs ECS PBA
22 Victoria Boulevard
Kenmore, New York 14217
(716) 873-8833

VERIFICATION

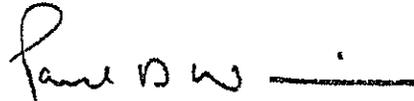
STATE OF NEW YORK)
)ss.:
COUNTY OF ERIE)

Jason Weiss, being duly sworn, deposes and says that he is one of the plaintiffs named in the within entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true to his knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes them to be true.



Jason Weiss

Sworn to before me this
25 day of Jan, 2016.



Notary Public

PAUL D. WEISS
No. 02WE4984193
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 15, 2019