



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH.
SECOND ASSISTANT COUNTY ATTORNEY

MEMORANDUM

TO: Robert M. Graber, Clerk, Erie County Legislature

FROM: Michelle M. Parker, First Assistant County Attorney

DATE: February 2, 2018

RE: Transmittal of New Claims Against Erie County

Mr. Graber:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find 14 new claims brought against the County of Erie. The claims are as follows:

Claim Name

1. Michael McKee v. Erie County Sheriff's Office
2. Jaysen Bray by PNG v. County of Erie, et al.
3. Jose Johnson v. NYS DOCCS
4. Jennifer Benten v. Erie County Sheriff's Office
5. Dante Taylor (Estate of) v. County of Erie, et al.
6. Victoria Kwitowski v. County of Erie, et al.
7. Louis Saccomanno v. County of Erie
8. Denise Wooten v. Erie Community College
9. Charles Benzo (Estate of) v. County of Erie, et al.
10. Tobias Boyland v. Sheriff Howard, et al.
11. Carolyn Ososki v. County of Erie, et al.
12. Destin & Kristen Montour/William Abbott v. Sheriff Howard, et al.
13. Julio Cruz Camacho v. County of Erie, et al.
14. Lisa Mineo v. County of Erie

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



COUNTY OF ERIE

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SECOND ASSISTANT COUNTY ATTORNEY

January 4, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>McKee, Michael v. ECSO - JMD</i>
Document Received:	Correspondence from claimant's counsel.
Name of Claimant:	Michael McKee 27 Pawtucket Row Orchard Park, New York 14127
Claimant's attorney:	Michelle M. Cubbon, Esq. Law Offices of Michelle Cubbon, Esq. 445 Hamilton Avenue, Suite 802 White Plains, New York 10601

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle M. Parker*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

RECEIVED
DEC 18 2017

Law Offices of Michelle Cubbon, Esq.
445 Hamilton Avenue
Suite 802
White Plains, New York 10601
(914)467-2218

RECEIVED
RECEIVED
DEC 18 2017

Frank Cammarata III, MPA
Executive Director
County of Erie
Edward A. Rath County Office Building
95 Franklin Street, 6th Floor
Buffalo, New York 14202

Dear Mr. Cammarata:

I have been retained by Michael McKee in connection with your improper denial of his request for a reasonable accommodation. Your letter of November 13, 2017 makes it very clear that you did not meet your legal obligations under the Americans with Disabilities Act ("ADA") and New York Human Rights Law to engage in an "interactive dialogue" and grant my client a reasonable accommodation. Note that your conclusion that his reasonable accommodation "was not warranted" is evidence that you did not comply with applicable legal standard.

The September 25, 2017 letter in which you initially denied my client's requested reasonable accommodation that his mandatory overtime is not assigned to the midnight shift did not provide a legally sustainable basis for undue hardship. The letter referred to a mistaken assumption that my client was bidding for shifts.

In fact, Mr. McKee has already bid for his shift (3-11), and his requested accommodation does not pertain to this bidding for shift. His medical information pertained to his request that any assigned mandatory overtime shall not be on the midnight shift. Assignment of mandatory overtime is not based on seniority, but on several factors such as how recently overtime had been mandated and whether an individual has a personal appointment. Therefore, the accommodation is reasonable and must be granted.

Furthermore, Mr. McKee has the support of his union to grant his requested reasonable accommodation. Given the information Mr. McKee previously provided, the County is legally obligated to grant Mr. McKee's requested reasonable accommodation. We are seeking a reversal of your prior determination and provision of Mr. McKee's requested reasonable accommodation so that we may avoid taking this matter to the EEOC.

I look forward to discussing this with you further.

Sincerely,



Michelle M. Cubbon



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 3, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>Bray, Jaysen R. by Mother Jaime Ann Bray v. Town of Yorkshire, County of Cattaraugus, Town of Concord, Village of Springville and County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Jaime Ann Bray MNG of Jaysen R. Bray 240 Park Street Arcade, New York 14009
Claimant's attorney:	Stephen R. Foley, Esq. Paul William Beltz, P.C. 36 Church Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

This paper received at the
Erie County Attorney's Office
from John MacCallick on

the 27th day of December, 2017

at 3:36 a.m./p.m.

Ann New
Assistant County Attorney

In the Matter of the Claim of

JAIME ANN BRAY, As mother and Legal
Guardian of JAYSEN R. BRAY
Claimants

NOTICE OF CLAIM

-VS-

TOWN OF YORKSHIRE, NEW YORK
COUNTY OF CATTARAUGUS
TOWN OF CONCORD, NEW YORK
VILLAGE OF SPRINGVILLE, NEW YORK
COUNTY OF ERIE
Respondents

PLEASE TAKE NOTICE that claimants, JAIME ANN BRAY, as mother and legal guardian of JAYSEN R. BRAY, pursuant to statutes in such cases made and provided, do hereby make claim against TOWN OF YORKSHIRE, NEW YORK, COUNTY OF CATTARAUGUS, TOWN OF CONCORD, NEW YORK, VILLAGE OF SPRINGVILLE, NEW YORK and COUNTY OF ERIE, and in support of such claim, do state the following:

1. My address is 240 Park Street, Arcade, New York 14009.
2. I am the mother and co-legal guardian for my son, Jaysen R. Bray.
3. I was awarded Temporary Letters of Guardianship 17A Person and Property, for my son, Jaysen R. Bray, on December 19, 2017, by the Hon. Barbara Howe, Surrogate Judge, and said Letters remain in full force and effect.
4. My attorney is Stephen R. Foley, Esq., 36 Church Street, Buffalo, New York

14202.

5. My son and ward, Jaysen R. Bray, is currently hospitalized at Erie County Medical Center and has been since October 6, 2017, and is suffering from intellectual and developmental disabilities requiring my guardianship.

6. The instant Claim arose on October 6, 2017, and is being filed and served within 90 days of accrual.

7. The facts that give rise to the Claim are as follows:

On October 6, 2017, my son and ward, Jaysen R. Bray, was a lawful passenger in a vehicle owned and operated by Logan Kiff as that vehicle was traveling in a generally easterly direction along Creek Road, east of its intersection with Bolton Road and west of its intersection with Bleumont Road, in the Town of Yorkshire, Cattaraugus County, New York, when Ms. Kiff was caused to lose control of her vehicle due to the negligence and carelessness of all the Respondents and others, causing certain permanent and severe injuries to my ward Jaysen Bray.

8. The exact location of where operator Logan Kiff was caused to lose control of her vehicle can more specifically be defined by GPS coordinates latitude: 40.712775 and longitude: -74.005973. This same location can also be defined by DMS (Degrees, Minutes, and Seconds) latitude 40° 24' 45.99 and longitude west 74° 0' 21.50.

9. Upon information and belief, Creek Road in the Town of Yorkshire, Cattaraugus County, New York, between its intersections with Bolton Road to the west and Bleumont Road to the east is a road owned, operated and maintained by respondent Town of Yorkshire, New York.

10. Upon information and belief, Creek Road in the Town of Yorkshire,

Cattaraugus County, New York, between its intersections with Bolton Road to the west and Bleumont Road to the east is a road owned and operated and maintained by respondent County of Cattaraugus, New York.

11. Upon information and belief, Creek Road in the Town of Yorkshire, Cattaraugus County, New York, between its intersections with Bolton Road to the west and Bleumont Road to the east is a road owned and operated and maintained by respondent Village of Springville, New York.

12. Upon information and belief, Creek Road in the Town of Yorkshire, Cattaraugus County, New York, between its intersections with Bolton Road to the west and Bleumont Road to the east is a road owned and operated and maintained by respondent Town of Concord, New York.

13. Upon information and belief, Creek Road in the Town of Yorkshire, Cattaraugus County, New York, between its intersections with Bolton Road to the west and Bleumont Road to the east is a road owned and operated and maintained by respondent County of Erie, New York.

14. On October 6, 2017, at the above described location along Creek Road, operator Logan Kiff was caused to lose control of her vehicle due to respondent Town of Yorkshire's negligent, careless, improper and inadequate maintenance, repair, design, and upkeep of the roadway at the location, and the area leading up to where Ms. Logan Kiff was caused to lose control of her vehicle.

15. On October 6, 2017, at the above described location along Creek Road, operator Logan Kiff was caused to lose control of her vehicle due to respondent County of Cattaraugus' negligent, careless, improper and inadequate maintenance, repair,

design, and upkeep of the roadway at the location, and the area leading up to where Ms. Logan Kiff was caused to lose control of her vehicle.

16. On October 6, 2017, at the above described location along Creek Road, operator Logan Kiff was caused to lose control of her vehicle due to respondent Village of Springville's negligent, careless, improper and inadequate maintenance, repair, design, and upkeep of the roadway at the location, and the area leading up to where Ms. Logan Kiff was caused to lose control of her vehicle.

17. On October 6, 2017, at the above described location along Creek Road, operator Logan Kiff was caused to lose control of her vehicle due to respondent Town of Concord's negligent, careless, improper and inadequate maintenance, repair, design, and upkeep of the roadway at the location, and the area leading up to where Ms. Logan Kiff was caused to lose control of her vehicle.

18. On October 6, 2017, at the above described location along Creek Road, operator Logan Kiff was caused to lose control of her vehicle due to respondent County of Erie's negligent, careless, improper and inadequate maintenance, repair, design, and upkeep of the roadway at the location, and the area leading up to where Ms. Logan Kiff was caused to lose control of her vehicle.

19. That the respondents had actual and constructive notice of said defective conditions.

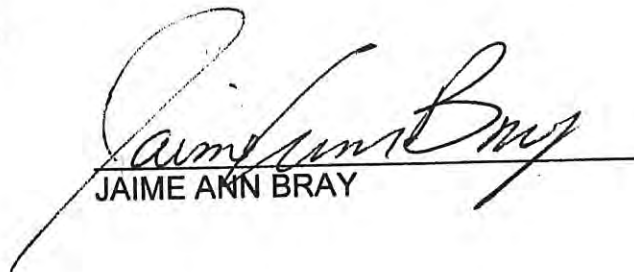
20. Upon information and belief, the respondents had prior written notice of the defective roadway at and near the location where Logan Kiff lost control of her vehicle.

21. That by reason of the premises, claimant, Jaime Ann Bray's son and ward, Jaysen R. Bray, was caused to suffer certain severe, permanent and painful injuries,

internal as well as external, by reason of which he has been and will be compelled to expend large sums of money for health care, and that he has been and will be incapacitated from performing his usual duties for a long period of time, all to his damage pursuant to CPLR Section 3017(c), and General Municipal Law Section 50-e .

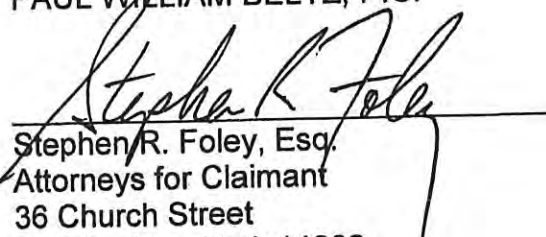
WHEREFORE, claimants request this claim be allowed and paid for by the defendants named above, pursuant to General Municipal Law 50-e and CPLR Section 3017(c), together with interest, costs and disbursements in this action.

DATED: Buffalo, New York
December 23, 2017



JAIME ANN BRAY

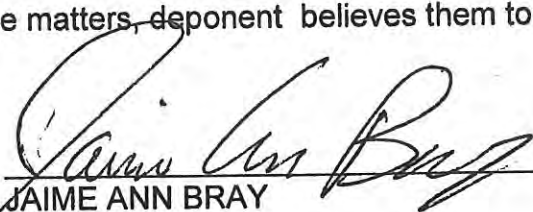
PAUL WILLIAM BELTZ, P.C.



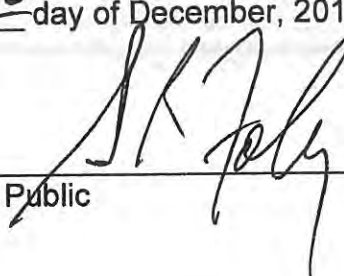
Stephen R. Foley, Esq.
Attorneys for Claimant
36 Church Street
Buffalo, New York 14202
(716) 852-1000

VERIFICATION

JAIME ANN BRAY, as mother and legal guardian of JAYSEN R. BRAY,
Claimants, being duly sworn, deposes and says that I am the Claimant in this action;
that I have read the foregoing Claim and know the contents thereof; that the same is
true to the knowledge of deponent, except as to the matters therein stated to be alleged
on information and belief, and as to those matters, deponent believes them to be true.


JAIME ANN BRAY

Sworn to before me this
23rd day of December, 2017


Notary Public

STEPHEN R. FOLEY
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 05/25/19



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 3, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>Johnson, Jose v. NYS DOCCS</i>
Document Received:	Petition for Writ of Habeas Corpus
Name of Claimant:	Jose Johnson DIN No. 13B3303 Erie County Correctional Facility 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Michael J. Stachowski, Esq. 2025 Clinton Street Buffalo, New York 14206

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle M. Parker*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Supreme Court
County Of Erie
State of New York

RECEIVED

2017 SEP 13 AM 10:22

CHIEF CLERK'S OFFICE
SUPREME & COUNTY COURTS
ERIE COUNTY

Petition for writ of
Habeas Corpus

In the Matter of the Application of:
Jose Johnson, Petitioner,
for a Writ of Habeas Corpus to Inquire
Into the Cause of Detention of

Jose Johnson

Petitioner Pro Se

Index # I-2017-000165

-v-

NYS DOCCS

Respondent

To the Honorable Justices of the Supreme Court of the State of New York,

Your Petitioner respectfully alleges and shows that:

1. Jose Johnson, the Petitioner, makes application herein on his/her own behalf for a Writ of Habeas Corpus. That the place where said Jose Johnson, Petitioner is imprisoned and restrained of his/her liberty is the Erie County Correctional Facility, 11581 Walden Avenue, in the Town of Alden, in the County of Erie, State of New York.
2. The officer by whom (s)he is so imprisoned and restrained is NYS division of Parole.
3. No Court or Judge of the United States has exclusive jurisdiction to release the said Jose Johnson, Petitioner, released.
4. The cause or pretense of the imprisonment and restraint of said Jose Johnson, Petitioner, according to the best knowledge and belief of Petitioner is That i was not provided the notice of violation in the time frame as prescribed by law

FILED
12/12/2017/ 09:59:19
ERIE COUNTY CLERK
RCPT # 17216715
I 2017000165

5. The imprisonment and restraint of said Jose Johnson,
Petitioner, is by virtue of a mandate, a copy of which is hereto annexed and marked
"Exhibit A".

6. The imprisonment and restraint of said Jose Johnson,
Petitioner, is illegal in that NYS DOCCS has 72 hours to
Serve me with my notice of violation pursuant to 9 NYCRR
8005.3. - Please see attached Exhibits.

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

8. No appeal has been taken from any Order or Judgment in any action or proceeding against
said Jose Johnson, Petitioner, whereby (s)he
has been imprisoned and restrained of his/her liberty except

(State to what Court or Judge taken and determination thereon)

WHEREIN Petitioner prays that a Writ of Habeas Corpus directed to said
NYS Division of Parole (name of officer or person by
whom Petitioner is imprisoned) be issued for the purpose of inquiring into the cause of the
imprisonment and restraint of said Jose Johnson, Petitioner,
and of delivering him/her therefrom pursuant to the statute in such case made and provided.

Dated: 9-1-17

Jose Johnson
Signature, Petitioner Pro Se

Sworn to before me this 1st
day of September, 2017

[Signature]
Signature, Notary Public

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 20

ATTACHMENTS TO PETITION FOR A WRIT OF HABEAS CORPUS, IF NECESSARY.

1101F Poor Person Petition – Form 18

Attach copy of detainer instrument (commitment papers)

Attach sentencing minutes if post-release case

TIMELINESS FOR NOTICE OF PAROLE VIOLATION...72 HOURS

**WEEKENDS DO COUNT. HOWEVER IF THE
THIRD DAY FALLS ON A SUNDAY, THEN
PAROLE CAN SERVE YOU THE
FOLLOWING DAY.**

124 A.D.2d 1032, 508 N.Y.S.2d 764

The People of the State of New York ex rel. Gerald Frost, Appellant, VS.

Andrew Meloni, as Monroe County Sheriff et al., Respondents.

Supreme Court, Appellate Division, Fourth Department, New York

CITE TITLE AS: People ex rel. Frost v Meloni

Appeal from judgment of Monroe County Court, Celli, J. --habeas corpus.

(1) Petitioner was served with parole detention warrant on Thursday; he was not given written notice of time, place and purpose of preliminary parole revocation hearing until following Monday --- Executive Law § 259-i (3) (c) (iii) requires that such notice be given to alleged parole violator 'within three days of the execution of the warrant' --- Since three-day period ended on Sunday, service on next succeeding business day was timely (see, General Construction Law § 25-a [1]).

Present--Dillon, P. J., Green, Pine, Balio and Lawton, JJ. Judgment unanimously affirmed.

Petitioner was served with a parole detention warrant on Thursday, May 15, 1986. He was not given written notice of the time, place and purpose of a preliminary parole revocation hearing until Monday, May 19, 1986. Executive Law § 259-i (3) (c) (iii) requires that such notice be given to an alleged parole violator "within three days of the execution of the warrant". Since the three-day period ended on a Sunday, service on the next succeeding business day was timely.

Thus viewed, there is no need to address the other issues raised by petitioner.

State of New York—Executive Department
Department of Corrections and Community Supervision

VIOLATION OF RELEASE REPORT

Warrant Issued: XXX

No Warrant Issued: _____

Name:	Johnson, Jose	Date Released:	09/08/16
NYSID No:	02 356 103P	Max. Expiration:	09/08/21
Institution:	Mohawk CF	→ Date of Warrant:	08/09/17
DIN No:	13B3303	Warrant No.:	770374
DOB:	04/04/92	Date Enforced:	08/09/17
Offense:	CPW 2 nd	Location:	ECCF
Sentence:	3-6-0 yrs. w/5-0-0 yrs. PRS	PVU No.:	

Delinquency Date: 08/09/17

Since his/her release, the above named individual has violated the Conditions of Release in the following manner:

CHARGE #1 (Violation of Rule #8):

Johnson violated Rule #8 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of Marijuana. This is evidenced by his arrest for Criminal Possession of Marijuana 3rd by the Buffalo Police Department.

CHARGE #2 (Violation of Rule #9):

Johnson violated Rule #9 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of a shotgun.

CHARGE #3 (Violation of Rule #9):

Johnson violated Rule #9 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of metal knuckles.

CHARGE #4 (Violation of Rule #9):

Johnson violated Rule #9 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of a bb gun.

CHARGE #5 (Violation of Rule #11):

Johnson violated Rule #11 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of Marijuana.

CHARGE #6 (Violation of Rule #11):

Johnson violated Rule #11 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of drug paraphernalia: an Eiffel tower hookah.

CHARGE #7 (Violation of Rule #11):

Johnson violated Rule #11 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of drug paraphernalia: a glass smoking pipe.

CHARGE #8 (Violation of Rule #11):

Johnson violated Rule #11 of the Conditions governing his release to Community Supervision, in that on 08/09/17 at about 8:22 p.m. at 178 Northland Avenue, Buffalo, NY, he was in possession of drug paraphernalia: a redwater bottle bong.

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
NOTICE OF VIOLATION

TO: Johnson, Jose INST. #: 1383303
WARRANT #: 770374 NYSID #: 02356103P

You are charged with violating the conditions of your release in the manner specified on the attached violation of release report.

A preliminary hearing on these charges has been scheduled on 8/21/17 at 900 AM at ECCF
Date Time Place

Should you waive a preliminary hearing or should probable cause be found at this hearing that you have violated the condition of your release in an important respect, a

final hearing on these charges will be held on 9/5/17 at 930 AM at ECCF-11581 Walden Ave. Alden, NY 140
Date Time Place

In the event that your return to the State of New York cannot be effected for the hearing as scheduled above due to circumstances beyond the Department's control, you will be afforded a preliminary hearing and final revocation hearing at such time as you may become available for return on the Department's warrant.

You have the right to a preliminary and final violation hearing. A preliminary hearing may be held to determine whether there is probable cause to believe that you violated one or more of the conditions of your release in an important respect. At this hearing you are entitled to appear and speak on your own behalf; introduce letters and documents; present witnesses who can give relevant information; and confront and cross-examine adverse witnesses. Proof of your conviction of a crime committed after your release shall constitute probable cause for the purpose of the preliminary hearing. You may be represented by counsel. It is your responsibility to obtain counsel. Your waiver of this preliminary hearing is equivalent to a finding of probable cause.

In the event that you are convicted of either a misdemeanor or a felony committed while under community supervision and a preliminary hearing has not been completed, you will not be entitled to the preliminary hearing on the basis of the new conviction. Any preliminary hearing which may have been scheduled may therefore be cancelled upon your conviction for such misdemeanor or felony.

Following the establishment of probable cause, the Board of Parole or its designee will review your case and may order that you be held for a final revocation hearing.

At the final revocation hearing, the presiding officer will determine whether there is a preponderance of evidence to support each of the charged violations. At this hearing, you have a right to be represented by counsel; to speak on your own behalf; have the right to introduce letters and documents; present witnesses who can give relevant information; and confront and cross-examine adverse witnesses against you. At this hearing, you also have the right to present mitigating evidence relevant to your restoration to community supervision.

In the event that you are convicted of a felony committed while under community supervision and you receive a new indeterminate or determinate sentence, any final revocation hearing which has been scheduled for you may be cancelled. In such instances, the Board of Parole may issue a final declaration of delinquency based upon that conviction and sentence.

In the event the Board of Parole issues a final declaration of delinquency, you will be served a copy of that determination together with a copy of the commitment.

Should you be convicted of a crime committed after your release, it is the intention of the Department of Corrections and Community Supervision to introduce evidence of your conviction at the time of your revocation hearing.

A request to adjourn either scheduled hearing should be made in the case of a preliminary hearing, at least three (3) days, and in the case of a final hearing, at least seven (7) days prior to the hearing, in writing, to the local area office. Requests for adjournments made at the hearing will only be granted for good cause shown.

Violation of Release Report received:

Jose Johnson → 8/14/17
Signature Date

All persons charged with a violation of parole are required to be present at all proceedings regarding that violation of community supervision which are authorized by the Board of Parole. Any voluntary failure on your part to be present at any of these proceedings may result in a finding that your failure to appear was a voluntary, knowing and intelligent waiver of your right to appear. Should such a finding be made, a hearing in absentia can be held and a final determination be made regarding the charges pending against you, including, if necessary, a time assessment because of the violation of community supervision.

☐ I DO wish to have a preliminary hearing:

8/14/17
Date
8/14/17
Date

☒ I do NOT wish to have a preliminary hearing.

Jose Johnson
Signature of Releasee
James Wilson
Signature of Witness

If you cannot afford an attorney and wish to have counsel at your preliminary hearing, sign and detach this form. It is your responsibility to mail the form to the address shown on the form. If you request assigned counsel at your preliminary hearing, you must mail this form IMMEDIATELY.

TO: Aid to Indigent Prisoners RE: Johnson, Jose
Crosby Bldg.-170 Franklin St. Name
Buffalo, NY 14002 WARRANT # 770374

I am an alleged community supervision violator being held at:

I am scheduled for a preliminary hearing to be held on 8/21/17 at 900 AM at ECCF
Date Time Place

I have waived my preliminary hearing. A final hearing has been scheduled for 9/5/17
Date

at 930 AM at ECCF-11581 Walden Ave. Alden, NY 14004
Time Place

I cannot afford an attorney and request that I be assigned counsel.

Releasee _____ Name _____



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 3, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>Benten, Jennifer v. Erie County Sheriff's Office</i>
Document Received:	EEOC Charge of Discrimination
Name of Claimant:	Jennifer Benten 10302 Smithely Road Alexander, New York 14005
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*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): ☐ FEPA ☒ EEOC 525-2018-00090	
New York State Division Of Human Rights and EEOC <i>State or local Agency, if any</i>			
Name (Indicate Mr., Ms., Mrs.) Jennifer Benten		Home Phone 716-867-0319	Year of Birth 1966
Street Address City, State and ZIP Code 10302 Smithely Road, ALEXANDER, NY 14005			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name ERIE COUNTY SHERIFFS OFFICE		No. Employees, Members 201 - 500	Phone No.
Street Address City, State and ZIP Code 10 Delaware Ave, BUFFALO, NY 14202			
Name		No. Employees, Members	Phone No.
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es)) ☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☒ RETALIATION ☒ AGE ☐ DISABILITY ☐ GENETIC INFORMATION ☐ OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 08-01-2017 11-01-2017 ☒ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I am female. I am 51 years old. Because of this I have been discriminated against. I previously filed a charge with the U.S. Equal Employment Opportunity Commission (EEOC). I have also complained internally. Because of this I have been retaliated against. I began working for the above-named department in March 2012. I am currently a Corrections Officer. Upon information and belief, I am one of only a handful of officers over the age of 50 at my location. I believe that I have been subject to unequal terms, conditions and privileges of employment afforded male and younger officers. On August 29, 2017, I received a letter of reprimand regarding the log book. Upon information and belief, I am the only officer to receive such a letter for this alleged infraction. Of note, because of the circumstances, the department was forced to remove the letter from my file. On November 1, 2017, I received a record of counseling regarding the log book. Upon information and belief, I am the only officer to receive such a record of counseling for this alleged infraction. Based on the above, I believe that I have been discriminated against because of sex and age in violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act and other applicable Federal, state and local anti-discrimination statutes. I further believe that I have been retaliated against in violation of these statutes.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
Digitally signed by Jennifer Benten on 12-10-2017 01:30 PM EST		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	



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 4, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Taylor, Dante, Estate of, by Darlene McDay v. ECMCC, County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Darlene McDay Executrix of the Estate of Dante Taylor 2717 Sipp Avenue Medford, New York 11763
Claimant's attorney:	Anthony M. La Pinta, Esq. Reynolds, Caronia, Gianelli & La Pinta, P.C. 200 Vanderbilt Motor Parkway, Suite C-17 Hauppauge, New York 11788

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle M. Parker*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

-----X
In the Matter of the Claim of

DARLENE McDAY, as Executrix of the Estate of DANTE
TAYLOR,

Claimant,

-against-

COUNTY OF ERIE, ERIE COUNTY MEDICAL CENTER
CORPORATION, WILLIAM RIVERS, M.D., ELIZABETH
HALL, P.A., CRYSTAL HARRINGTON, R.N., LINETTE
BLASZAK, R.N., JENNIFER PUGH, M.D., and JOHN and
JANE DOE 1-10 (employees of Erie County Medical Center
Corporation who provided care to decedent whose names are
not yet known or identified),

Respondents.
-----X

TO: COUNTY OF ERIE
c/o Erie County Department of Law
Edward A. Rath County Office Building
95 Franklin Street, Room 1634
Buffalo, New York 14202

ERIE COUNTY MEDICAL CENTER CORPORATION
c/o Thomas Quatroche, Chief Executive Officer
462 Grider Street
Buffalo, New York 14215

WILLIAM RIVERS, M.D.
Erie County Medical Center Corporation
462 Grider Street
Buffalo, New York 14215

ELIZABETH HALL, P.A.
Erie County Medical Center Corporation
462 Grider Street
Buffalo, New York 14215

CRYSTAL HARRINGTON, R.N.
Erie County Medical Center Corporation
462 Grider Street
Buffalo, New York 14215

NOTICE OF CLAIM

This paper received at the
Erie County Attorney's Office
from Michael Liszewski
the 3rd day of January 2018
at 10:34 a.m. p.m.

Michael Liszewski
Assistant County Attorney

Michael Liszewski

LINETTE BLASZAK, R.N.
Erie County Medical Center Corporation
462 Grider Street
Buffalo, New York 14215

JENNIFER PUGH, M.D.
Erie County Medical Center Corporation
462 Grider Street
Buffalo, New York 14215

JOHN and JANE DOE 1-10 (employees of Erie County Medical Center Corporation who provided care to decedent whose names are not yet known or identified)
Erie County Medical Center Corporation
462 Grider Street
Buffalo, New York 14215

PLEASE TAKE NOTICE that the undersigned Claimant hereby makes claim and demands against you as follows:

1. Name and post office address of each Claimant and Claimant's attorney is:

Claimant

DARLENE McDAY, as Executrix of the Estate of DANTE TAYLOR
2717 Sipp Avenue
Medford, New York 11763

Attorneys

REYNOLDS, CARONIA, GIANELLI & LA PINTA, P.C.
By: Anthony M. La Pinta, Esq.
200 Vanderbilt Motor Parkway, Suite C-17
Hauppauge, New York 11788
(631) 231-1199

2. Nature of Claim:

Action to recover for wrongful death; medical malpractice; unlawful deprivation of medical treatment; negligence; recklessness; carelessness; negligent hiring, training, supervision, monitoring and retention of agents, servants and employees.

3. The time when, the place where and the manner in which the claim arose:

At all times relevant to this claim, Claimant's decedent, DANTE TAYLOR (hereinafter "decedent"), was an inmate at the Wende Correctional Facility located at 3040 Wende Road, Alden, New York 14004, and was assigned DIN #: 16A3177.

Upon information and belief, on October 7, 2017, at approximately 1:00 a.m., decedent was transported to respondent, ERIE COUNTY MEDICAL CENTER CORPORATION, located at 462 Grinder Street, Buffalo, New York 14215, by ambulance from Wende Correctional Facility. He arrived at respondent, ERIE COUNTY MEDICAL CENTER CORPORATION, at approximately 1:20 a.m. He was treated and discharged back to Wende Correctional Facility at approximately 4:30 a.m. Upon information and belief, decedent did not receive proper, adequate or sufficient medical care for his injuries while he was a patient at respondent, ERIE COUNTY MEDICAL CENTER CORPORATION, as is more fully set forth below.

On October 7, 2017, at approximately 10:20 a.m., in the infirmary at the Wende Correctional Facility, decedent was found unconscious, he was not breathing and had no pulse. Decedent was in cardiac arrest. At approximately 11:10 a.m., he was transported to Sisters of Charity Hospital, St. Joseph Campus, located at 2605 Harlem Road, Cheektowaga, New York 14225. He arrived at Sisters of Charity Hospital at 11:31 a.m. Efforts to revive decedent failed. Upon information and belief, on October 7, 2017, at 11:51 a.m., decedent was pronounced dead.

Upon information and belief, while decedent was in the respondents', COUNTY OF ERIE, ERIE COUNTY MEDICAL CENTER CORPORATION, WILLIAM RIVERS, M.D., ELIZABETH HALL, P.A., CRYSTAL HARRINGTON, R.N., LINETTE BLASZAK, R.N., JENNIFER PUGH, M.D., and JOHN and JANE DOE 1-10 (employees of Erie County Medical Center Corporation who provided care to decedent whose names are not yet known or identified), care, respondents, were careless, negligent, reckless, engaged in medical negligence and departed from acceptable standards of medical care and treatment standards by failing to employ proper diagnosis, tests, procedures and practices for the health, welfare and safety of decedent; failing to properly evaluate and assess the severity of decedent's condition, and treat him accordingly; failing to properly review all of decedent's medical records; failing to accurately document/report decedent's clinical objective signs/symptoms; failing to formulate a proper treatment plan; failing to properly monitor decedent's condition subsequent to initial assessment; failing to recognize and heed decedent's objective and subjective signs, symptoms and complaints; failing to give proper acute emergent care; failing to seek the appropriate and medically indicated evaluations and/or consults; failing to treat decedent in accordance with that degree of skill and care required under the circumstances then and there existing; failing to possess the skills and education necessary to properly examine and treat decedent; failing to provide adequate staffing to provide necessary services; failing to meet basic human needs; failing to enact proper and adequate staffing procedures; failing to properly train and/or instruct its employees with regard to proper medical care, as well as to properly and/or adequately supervise said employees to ensure proper medical care was followed; failing to review or consider decedent's head CT scan; failing to order further diagnostic testing of decedent's head; failing to order diagnostic testing of decedent's shoulders; failing to address decedent's abnormal respiratory rate of 33-34; failing to address decedent's abnormal white blood count of 18.5; administering Dilaudid to decedent when he was administered Ativan a short time earlier at the infirmary of Wende Correctional Facility; failing to address the T-wave inversion on decedent's EKG; and, discharging decedent from the hospital without fully analyzing the extent of his injuries.

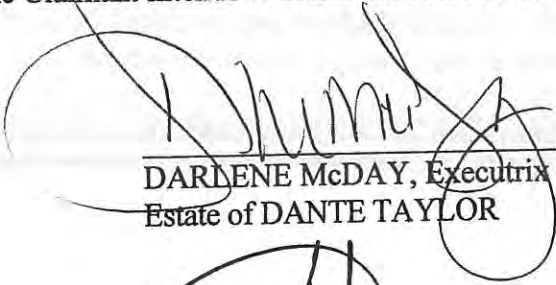
Upon information and belief, decedent sustained serious permanent injuries including, but not limited to, significant conscious pain and suffering and death as a result of respondents, COUNTY OF ERIE, ERIE COUNTY MEDICAL CENTER CORPORATION, WILLIAM RIVERS, M.D., ELIZABETH HALL, P.A., CRYSTAL HARRINGTON, R.N., LINETTE BLASZAK, R.N., JENNIFER PUGH, M.D., and JOHN and JANE DOE 1-10 (employees of Erie County Medical Center Corporation who provided care to decedent whose names are not yet known or identified), violating their duties and responsibilities as to the quality of care to decedent and were negligent and careless in their diagnosis, care, examination, treatment and discharge of decedent. Upon information and belief, decedent died on October 7, 2017 due to the carelessness, negligence and recklessness and/or medical malpractice of respondents without any negligence on the part of decedent.

4. The items of damage or injuries claimed:

As a result of the foregoing, decedent was caused to suffer serious bodily injury and death as a result of respondents' negligence and malpractice. This claim is for damages, including, but not limited to, pain and suffering, lost wages, compensatory damages, general damages, special damages and punitive damages. This claim exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction of this action.

The undersigned Claimant therefore presents this claim for adjustment and payment. You are hereby notified that unless this claim is adjusted and paid within the time provided by law from the date presented to you, the Claimant intends to commence an action based upon the facts of this claim.

Dated: Hauppauge, New York
January 1, 2018



DARLENE McDAY, Executrix of the
Estate of DANTE TAYLOR



REYNOLDS, CARONIA, GIANELLI &
LA PINTA, P.C.

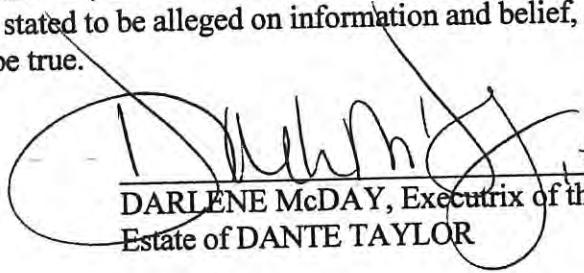
By: Anthony M. La Pinta, Esq.
Attorneys for Claimant
200 Vanderbilt Motor Parkway, Suite C-17
Hauppauge, New York 11788
(631) 231-1199

VERIFICATION

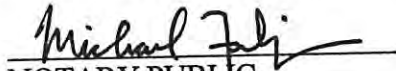
STATE OF NEW YORK)

COUNTY OF SUFFOLK) ss.:

DARLENE McDAY, Executrix of the Estate of DANTE TAYLOR, being duly sworn, deposes and says that deponent is the Claimant in the within action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

 executrix
DARLENE McDAY, Executrix of the
Estate of DANTE TAYLOR

Sworn to before me this 2018
1st day of January, 2017.


NOTARY PUBLIC

MICHAEL FEHRINGER
Notary Public, State of New York
No. 02FE6183963
Qualified in Suffolk County
Commission Expires April 16, 2018
2019

In the Matter of the Claim of

DARLENE McDAY, as Executrix of the Estate of DANTE TAYLOR,

Claimant,

-against-

COUNTY OF ERIE, et al.

Respondents.

NOTICE OF CLAIM

REYNOLDS, CARONIA, GIANELLI & LA PINTA, P.C.

Attorneys for Claimant

200 Vanderbilt Motor Parkway, Suite C-17

Hauppauge, New York 11788

(631) 231-1199

To:

Attorney (s) for

Service of a copy of the within

is hereby admitted.

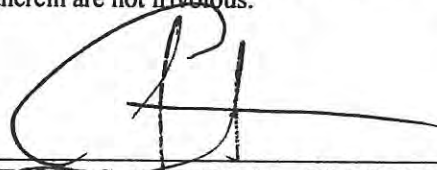
Dated:

.....
Attorney (s) for

The Undersigned, an attorney duly admitted to practice in the Courts of the State of New York, states:

Pursuant to 22 NYCRR 13—1.1, the undersigned hereby certifies under penalty of perjury and as an officer of the court that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this document or the contentions therein are not frivolous.

Date: January 1, 2018



**REYNOLDS, CARONIA, GIANELLI &
LA PINTA, P.C.**

By: Anthony M. La Pinta, Esq.

Attorneys for Claimant

200 Vanderbilt Motor Parkway, Suite C-17

Hauppauge, New York 11788

(631) 231-1199

TO:



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 8, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear ~~Ms. McCarthy~~:

In compliance with the Resolution No. 306 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>Kwitowski, Victoria v. West Seneca Central School District, Town of West Seneca and County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Victoria Kwitowski 40 W. Cranwood Drive West Seneca, New York 14224
Claimant's attorney:	Bethany A. Rubin, Esq. Andrews, Bernstein, Maranto & Nicotra PLLC 420 Franklin Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

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

VICTORIA KWITOWSKI
40 W. Cranwood Drive
West Seneca, New York 14224

Claimant,

vs.

NOTICE OF CLAIM

WEST SENECA CENTRAL SCHOOL DISTRICT
675 Potters Road
West Seneca, New York 14224,

TOWN OF WEST SENECA
West Seneca Town Hall
1250 Union Road
West Seneca, New York 14224,

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

Respondents.

PLEASE TAKE NOTICE, that Claimant, VICTORIA KWITOWSKI, hereby intends to file a claim against the WEST SENECA CENTRAL SCHOOL DISTRICT, the TOWN OF WEST SENECA, and the COUNTY OF ERIE and in support of said claim states the following:

1. The Post Office address of the Claimant, VICTORIA KWITOWSKI is 40 W. Cranwood Drive, West Seneca, New York 14224.
2. The attorneys for the Claimant are Andrews, Bernstein, Maranto & Nicotra, PLLC, 420 Franklin Street, Buffalo, New York 14202, Telephone (716) 842-2200.
3. The Claim arose as follows: On October 30, 2017, Claimant VICTORIA KWITOWSKI, was stopped in her vehicle waiting to make a left-hand turn when she was struck by a WEST SENECA CENTRAL SCHOOL DISTRICT bus from behind. Upon

information and belief, WEST SENECA CENTRAL SCHOOL DISTRICT is owned, operated, supervised and maintained by the TOWN OF WEST SENECA and/or the COUNTY OF ERIE.

4. This incident was caused by the negligence, carelessness, and recklessness on the part of the WEST SENECA CENTRAL SCHOOL DISTRICT, the TOWN OF WEST SENECA, and/or the COUNTY OF ERIE and/or their agents, servants and/or employees as follows:

- a) Negligently hiring the bus driver;
- b) Negligent in supervising the bus driver;
- c) Negligent in training the bus driver;
- d) Negligently retaining the bus driver; and
- e) The Respondents were otherwise negligent

5. That as a result of said accident, Claimant, VICTORIA KWITOWSKI, suffered serious injuries as defined in § 5102(d) of the Insurance Law of the State of New York, including injuries to her head and neck. Claimant, VICTORIA KWITOWSKI, also suffered other injuries and complications as yet undetermined as a result of this accident.

6. This claim is for personal injuries, conscious physical and emotional pain and suffering, medical expenses, as well as consequential damages.

7. By virtue of the negligence, carelessness and recklessness of the WEST SENECA CENTRAL SCHOOL DISTRICT, the TOWN OF WEST SENECA, and the COUNTY OF ERIE, Claimant, VICTORIA KWITOWSKI, was caused to suffer serious, significant and permanent injuries from this incident, including a concussion, headaches, and injuries to her head and neck. Claimant, VICTORIA KWITOWSKI, also suffered

other injuries and complications as yet undetermined as a result of this accident, and by reason of the same, Claimant sustained damages in an amount which cannot be reasonably calculated at this time.

7. By virtue of the negligence, carelessness, and recklessness of the WEST SENECA CENTRAL SCHOOL DISTRICT, the TOWN OF WEST SENECA, and/or the COUNTY OF ERIE, Claimant has also incurred hospital and medical expenses, loss of income and other necessary related expenses, the amount of which is undetermined to date.

WHEREFORE, claimant request that the WEST SENECA CENTRAL SCHOOL DISTRICT, the TOWN OF WEST SENECA, and/or the COUNTY OF ERIE compensate Claimant, VICTORIA KWITOWSKI, for her injuries.

Dated: Buffalo, New York
December 29, 2017

Yours, etc.,

By:



Bethany A. Rubin, Esq.

ANDREWS, BERNSTEIN & MARANTO, LLP

Attorney for the Plaintiffs

420 Franklin Street

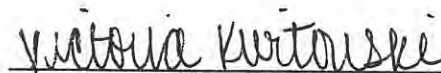
Buffalo, New York 14202

(716) 842-2200

VERIFICATION

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

VICTORIA KWITOWSKI, being duly sworn, deposes and says that he is the Claimant in this action for himself and as parent and natural guardian of Claimant, VICTORIA KWITOWSKI; that he has read the foregoing Notice of Claim in this action and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes them to be true.


VICTORIA KWITOWSKI

Sworn to before me this 29
day of December, 2017


Notary Public

MARIA DUIC
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DU6349626
Qualified In Niagara County *et al*
My Commission Expires 10-24-2020



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 16, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear ~~Mr. Graber~~ Ms. McCarthy:

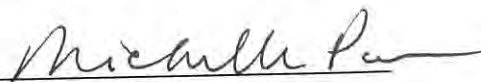
In compliance with the Resolution No. 306 passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Saccomanno, Louis M. v. County of Erie</i>
Document Received:	EEOC Charge of Discrimination
Name of Claimant:	Louis M. Saccomanno 51 Wardman Road Kenmore, New York 14217
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

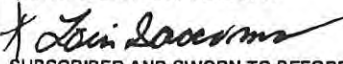
MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld

Enc.

Comm. 4D-2

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): ☐ FEPA ☒ EEOC 525-2018-00293	
New York City Commission On Human Rights and EEOC State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.) Mr. Louis M. Saccomanno		Home Phone (Incl. Area Code) 716-704-5399	Date of Birth 1957
Street Address City, State and ZIP Code 51 Wardman Road, Kenmore, NY 14217			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name ERIE COUNTY SOCIAL SERVICES		No. Employees, Members 101 - 200	Phone No. (Include Area Code) 716-858-6709
Street Address City, State and ZIP Code 478 Main Street, Buffalo, NY 14202			
Name RECEIVED JAN 03 2018 E.E.O.C. BUFFALO		No. Employees, Members	Phone No. (Include Area Code)
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) ☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ RETALIATION ☐ AGE ☒ DISABILITY ☐ GENETIC INFORMATION ☐ OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 04-19-2017 04-19-2017 ☐ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I am a qualified individual with multiple disabilities. Respondent is aware of my disabilities. I have worked for Respondent (as a permanent employee) since 1999. My current position is Case Worker for Children Services at DSS. For the last four years I have been performing my current position. However, some of the duties of my job exacerbated some of the symptoms of my disabilities in 2016. Consequently, in or around November 2016, I requested a transfer to another position as reasonable accommodation. I ended up having to take FMLA since December 2016 until March 2017. I returned to the same position on or about March 6, 2017. I was initially able to perform my job, but when the workload increased, the symptoms of my disabilities flared up. I kept asking for a transfer as a reasonable accommodation. On or about April 19, 2017, I received a letter from Respondent that my request was denied. On or about July 15, 2017 I was placed on involuntary Administrative Leave (paid-leave.) I was required to be evaluated by Respondent's suggested physicians. To this date, I have not been allowed to return to work and I have not been approved a transfer as reasonable accommodation. I believe that I have been discriminated against because of my disabilities, in violation of the Americans with Disabilities Act of 1990, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Date Charging Party Signature 12/26/2017 			



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

January 16, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>Wooten, Denise v. ECC</i>
Document Received:	Complaint
Name of Claimant:	Denise Wooten
Claimant's attorney:	Lindy Korn, Esq. Law Office of Lindy Korn, PLLC Electric Tower 535 Washington Street, 9th Floor Buffalo, New York 14203

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle M. Parker*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld

Enc.

Comm. 4D-2



Law Office of
LINDY KORN, PLLC

Electric Tower
535 Washington Street, Ninth Floor
Buffalo, New York 14203

RECEIVED
JAN 11 2018
LEGAL AFFAIRS

January 8, 2018

VIA CERTIFIED MAIL

President Daniel Hocoy
Erie Community College
6205 Main Street
Williamsville, New York 14221

Re: Denise Wooten

President Hocoy:

Our office represents Professor Denise Wooten. This letter seeks to facilitate a resolution of the legal issues between Professor Wooten and Erie Community College ("ECC") before resorting to litigation. This letter and any attachments are subject to the protections enumerated in New York CPLR § 4547 and any other benefits afforded to settlement discussions.

Professor Wooten has shared with me the details of a long, and on-going, pattern of discrimination by the agents of ECC. Some of those details regarding racial and sexual discrimination are detailed in the draft complaint attached to this letter (Attachment A). Please also find enclosed our notice regarding the preservation of electronic and paper evidence which is effective immediately (Attachment B).

Professor Wooten is concerned, given the status of the law, that she may have been the victim of discrimination based on her membership in multiple protected classes. She is interested in resolving this matter quickly and amicably with ECC. Professor Wooten now reaches out to you in the spirit of cooperation in order to put these issues to rest so that both parties may move forward.

Specifically, my client is interested in compensation for the wrongs she has experienced. Based upon her emotional distress damages that are compounded by the hostile work environment, and compensatory damages, Professor Wooten demands compensation in the form of \$99,000 dollars. Second, it is also important that the bad actor in the most recent pattern of

- Phone (716) 856-KORN (5676) • Fax (716) 507-8475 • Email: lkorn@lkorn-law.com •
- www.lkorn-law.com • buffalo-discrimination-attorney.com

discrimination – Lisa Kunkle – be transferred in order to alleviate the ongoing hostile work environment that ECC has suffered to permit. That hostile work environment has metastasized into an extremely stressful work environment that exacerbates Professor Wooten's medical and emotional distress and must be remedied quickly. Finally, Professor Wooten asks that the student advisors detailed in the complaint be counseled against discouraging students from taking her classes.

If you are interested in exploring an amicable resolution, please respond to me no later than Monday, January 29, 2018. If I do not hear from you by this time, I will advise my client accordingly.

Thank you for your time and attention. Please do not hesitate to contact me if you have any questions. I look forward to hearing from you.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lindy Korn".

Lindy Korn, Esq.
LK/mk

cc: Denise Wooten

Attachment A

SUPREME COURT: STATE OF NEW YORK
ERIE COUNTY

DENISE WOOTEN,

PLAINTIFF,

vs.

COMPLAINT

Index No. _____

ERIE COMMUNITY COLLEGE,

DEFENDANT.

Plaintiff, Denise Wooten, alleges as follows:

PARTIES

1. Plaintiff is a natural person with a place of residence located within Buffalo, New York.
2. Defendant Erie Community College (hereafter "ECC") is a college with offices located at 6205 Main Street, Williamsville, New York 14221.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to New York Civil Practice Law and New York Executive Law, Article 15, § 297, and 42 U. S. C. § 2000e *et seq.*
4. Venue is proper in this Court based upon Defendant's location in the County of Erie, and because a substantial part of the acts or omissions giving rise to the Plaintiff's claims occurred in the County of Erie.

NATURE OF THE CLAIMS

5. Plaintiff seeks redress for discriminatory treatment based on race and sex in violation of New York Executive Law §296 and Title VII of the Civil Rights Act of 1964.
6. Denise Wooten, the Plaintiff herein, is an African-American female.
7. Professor Wooten is a graduate of Canisius College where she attended with a full-scholarship.
8. After Canisius College, Professor Wooten obtained her MBA from the University of Wisconsin at Madison where she was awarded a full fellowship.
9. Professor Wooten is employed by Erie Community College ("ECC") as a tenured full professor in longevity.
10. In fact, Professor Wooten is one of two tenured African-American Business Administration professors employed by ECC on a full-time basis.
11. Professor Wooten began working for ECC in January of 1979.
12. Initially, Professor Wooten was the only African-American in the north campus Business Administration department.
13. Shortly after Professor Wooten began teaching for ECC, another employee of ECC, Ronald Radlich, began to spread misinformation about Professor Wooten.
14. Radlich claimed, for example, that Professor Wooten "only had a GED."
15. Professor Wooten moved to Clarence in 2003.
16. Shortly after Professor Wooten's move to Clarence, Radlich made complaints to employees of ECC regarding Professor Wooten's move.
17. He would state things along the lines of "how can she afford this" and ask similar types of questions to the employees of ECC.
18. He would also ask those employees "did you know about this" and confront them with "why didn't you tell us?"
19. When Professor Wooten became aware of Radlich's statements, she complained.
20. ECC informed Professor Wooten that they would speak with Radlich about his statements.
21. Around this same time period, Barry Nowicki, ECC's then Assistant Academic Dean, complained about the quality of Professor Wooten's textbook that she authored.
22. Nowicki's complaints about Professor Wooten's textbook were despite the fact that Nowicki had recommended Professor Wooten for a SUNY Chancellor's award for excellence in teaching, citing her textbook the previous year.

23. However, Nowicki was now calling for a review of Professor Wooten's textbook – a remedy that had not been initiated in the 26 years that Professor Wooten had been employed by ECC.
24. Professor Wooten duly filed a complaint about Nowicki to ECC, citing racism and sexism as the basis for his attack on Professor Wooten.
25. This complaint of racism and sexism also identified Radlich, and other members of the Business Administration Department as included in her allegations of discrimination.
26. Nowicki's crusade along with the actions of other ECC employees and affiliate employees against Professor Wooten has resulted in adverse actions against Professor Wooten that occur up until and including this year.
27. These actions against Professor Wooten are largely not inflicted upon other professors who publish textbooks.
28. Based on this information, upon information and belief, Professor Wooten's complaints of discrimination have been ignored by ECC.
29. In 2015 and 2016 Professor Wooten became aware through student complaints that Radlich was telling students he advised as a Student Advisor that they should not take Professor Wooten's classes.
30. Professor Wooten duly complained to Kathy DeNisco, the Department Chair of the Business Administration Department.
31. Upon information and belief, DeNisco spoke with Radlich about Professor Wooten's complaints regarding Radlich's behavior.
32. In December of 2016 Professor Wooten was informed by another student that the student's advisor dissuaded that student from taking classes taught by Professor Wooten or Professor Wooten's sister, the only other full-time teacher in the department that is African-American.
33. Despite the fact that this was a repeat of the issues that Professor Wooten complained of earlier, Professor Wooten complained of Radlich's behavior again.
34. ECC instructed Professor Wooten to obtain a statement from the student. That statement was provided to ECC, detailing the actions of Radlich.
35. Also in 2016 Professor Wooten accepted the position of Chair of the Business Administration Department.
36. As Chair, Professor Wooten is responsible for the Department, including its certification of students as eligible to graduate.

37. Part of the process of certifying students as eligible to graduate can involve waiving certain course requirements where the student has successfully completed substantially similar coursework.
38. Ultimately, the certification of course substitution is the Chair's responsibility.
39. In May 2017 a faculty member in the Business Administration Department, Lisa Kunkle, made a request to allow a number of students to graduate despite the fact that they had not taken specific classes required to do so.
40. Kunkle is a Caucasian-American female.
41. Kunkle requested that their other coursework be considered as adequately meeting the graduation requirements.
42. Kunkle stated that she -personally- had been substituting classes for students for the past 15 years.
43. Professor Wooten duly reviewed the coursework of the students that Kunkle proposed be certified to graduate.
44. The coursework was not similar in any material respect.
45. Accordingly, Professor Wooten declined to certify these students for graduation.
46. Shortly thereafter, Professor Wooten was asked to attend a meeting with several administrative employees of ECC where she was asked to sign the certifications.
47. Kunkle was also attending, with the benefit of union representation which had ruled that Professor Wooten had to sign the certifications.
48. Because of these very serious factors which could easily jeopardize the accreditation of ECC by their accreditation agency Middle States, coupled with the serious injury that Kunkle's actions posed, Professor Wooten believed Kunkle would be the subject of discipline.
49. Instead, Kunkle was not disciplined, and subsequently ECC certified the students as eligible to graduate.
50. This aberration of ECC's policy to exclude Kunkle from discipline for misconduct was potentially discriminatory, and absolutely damaging to ECC and the Department's reputation.
51. As a result, Professor Wooten tendered her resignation for her position as Chair citing ECC's actions regarding the lack of discipline for Kunkle.

52. Professor Wooten stated that Kunkle's behavior was unprofessional, and specifically stated that the failure to discipline Kunkle was discriminatory in favor of Kunkle to the prejudice of other, minority and tenured business administration professors.
53. Kunkle responded to Professor Wooten's resignation by claiming that Professor Wooten was, among other things, a liar, incompetent, and a bully.
54. As of the date of this complaint, ECC has failed to discipline Kunkle for her misconduct related to the miscertification of students for graduation, or for Kunkle's slanderous statements against Professor Wooten.
55. Professor Wooten believes that she has been subject to discipline and scrutiny by ECC and its employees that other, Caucasian employees are not subjected to.
56. Conversely, other, Caucasian employees are not investigated or disciplined despite Professor Wooten's complaints of discrimination.
57. This failure to investigate or discipline based on Professor Wooten's complaints of discrimination is condonation by ECC.

FIRST AND SECOND CAUSES OF ACTION

Racial Discrimination in Violation of New York State Human Rights Law (Executive Law, Article 15), 296(1) and Title VII of the Civil Rights Act of 1964

58. Plaintiff repeats each and every allegation set forth herein in the preceding paragraphs as though fully set forth herein.
59. In order to establish a *prima facie* case of unlawful racial discrimination, a plaintiff must show: (1) that they are a member of the class protected by statute; (2) that they suffered an adverse employment action; (3) that they were qualified to hold the position; (4) that the adverse employment action occurred under circumstances giving rise to an inference of discrimination. *See, Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 629 (1997).
60. As to the first element, Plaintiff is African-American.
61. As to the second element, Defendants inflicted an adverse action upon Plaintiff by condoning the acts of Defendant's employees in harassing Plaintiff, failing to discipline Defendant's employees, failing to investigate Plaintiff's complaints of discrimination, failing to take action based upon Plaintiff's complaints of discrimination, usurping Plaintiff's ability to act as Chair of

- the Business Administration Department, and by constructively discharging Plaintiff from her position as Chair of the Business Administration Department.
62. As to the third element, Plaintiff was qualified to hold her position as she had been hired by Defendant, remains in the employ of Defendant, and has received numerous citations and awards for her performance.
63. As to the fourth element, Plaintiff's adverse actions occurred under circumstances giving rise to an inference of racial discrimination by Defendant because others outside her protected class, specifically Defendant's employees who were Caucasian, had their discriminatory behavior toward Plaintiff condoned by Defendant, were not subject to the adverse actions that were inflicted upon Plaintiff, and were otherwise exempt from the scrutiny, harassment, and discipline to which Plaintiff was subjected.
64. Based on the foregoing allegations, Plaintiff states a cause of action for discrimination based upon race in violation of the New York State Human Rights Law and Title VII of the Civil Rights Act of 1964 against Defendant ECC.

THIRD AND FOURTH CAUSES OF ACTION
Sex Discrimination in Violation of New York State Human Rights Law (Executive Law, Article 15), 296(1) and Title VII of the Civil Rights Act of 1964

65. Plaintiff repeats each and every allegation set forth herein in the preceding paragraphs as though fully set forth herein.
66. In order to establish a *prima facie* case of unlawful racial discrimination, a plaintiff must show: (1) that they are a member of the class protected by statute; (2) that they suffered an adverse employment action; (3) that they were qualified to hold the position; (4) that the adverse employment action occurred under circumstances giving rise to an inference of discrimination. *See, Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 629 (1997).
67. As to the first element, Plaintiff is female.
68. As to the second element, Defendants inflicted an adverse action upon Plaintiff by condoning the acts of Defendant's employees in harassing Plaintiff, failing to discipline Defendant's employees, failing to investigate Plaintiff's complaints of discrimination, failing to take action based upon Plaintiff's complaints of discrimination, usurping Plaintiff's ability to act as Chair of

the Business Administration Department, and by constructively discharging Plaintiff from her position as Chair of the Business Administration Department.

69. As to the third element, Plaintiff was qualified to hold her position as she had been hired by Defendant, remains in the employ of Defendant, and has received numerous citations and awards for her performance.
70. As to the fourth element, Plaintiff's adverse actions occurred under circumstances giving rise to an inference of sex discrimination by Defendant because others outside her protected class, specifically Defendant's employees who were male, had their discriminatory behavior toward Plaintiff condoned by Defendant, were not subject to the adverse actions that were inflicted upon Plaintiff, and were otherwise exempt from the scrutiny, harassment, and discipline to which Plaintiff was subjected.
71. Based on the foregoing allegations, Plaintiff states a cause of action for discrimination based upon sex in violation of the New York State Human Rights Law and Title VII of the Civil Rights Act of 1964 against Defendant ECC.

FIFTH AND SIXTH CAUSES OF ACTION

Hostile Work Environment in Violation of New York State Human Rights Law (Executive Law, Article 15), § 296(1) and Title VII of the Civil Rights Act of 1964

72. Plaintiff repeats each and every allegation set forth herein in the preceding paragraphs as though fully set forth herein.
73. An actionable hostile work environment exists when the workplace is permeated with "discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the terms or conditions of employment." *Vitale v. Rosina Food Prods.*, 283 A.D.2d 141, 143 (4th Dept. 2001)(internal citations omitted).
74. Defendant(s) violated the above section as set forth herein by, *inter alia*, creating a hostile work environment that was a discriminatorily hostile or abusive environment by condoning the acts of Defendant's employees in harassing Plaintiff, failing to discipline Defendant's employees, failing to investigate Plaintiff's complaints of discrimination, failing to take action based upon Plaintiff's complaints of discrimination, usurping Plaintiff's ability to act as Chair of the Business Administration Department, and by constructively discharging Plaintiff from her position as Chair of the Business Administration Department.

75. Based on the foregoing allegations, Plaintiff states a cause of action for a hostile work environment in violation of the New York State Human Rights Law and Title VII of the Civil Rights Act of 1964 against Defendant ECC.

SEVENTH AND EIGHTH CAUSES OF ACTION

Retaliation in Violation of New York State Human Rights Law (Executive Law, Article 15), § 296(1) and Title VII of the Civil Rights Act of 1964

76. Plaintiff repeats each and every allegation set forth herein in the preceding paragraphs as though fully set forth herein.
77. To establish a prima facie case for retaliation/opposed discrimination, a plaintiff must show that: (1) he engaged in protected activity; (2) the employer was aware of the activity; (3) the employer took adverse actions; and (4) a causal connection exists between the protected activity and the adverse action. *Cifra v. General Electric Co.*, 252 F.3d 205, 216 (2d Cir. 2001).
78. As to the first element, Plaintiff engaged in a protected activity by complaining of discrimination in 2016 and 2017 of the discriminatory behavior of employees of the Defendant.
79. As to the second element, the employer was aware of the activity because of Plaintiff's complaint was submitted directly to Defendant.
80. As to the third element, Plaintiff has suffered an adverse employment action by the creation of a hostile work environment by Defendants, the failure of the Defendant to investigate based upon Plaintiff's complaints, the failure to punish the discriminatory behavior of the bad-actors that were the subject of Plaintiff's complaints, the condonation of the discriminatory behavior by the bad-actors that were the subject of the Plaintiff's complaints, the continuation of the discriminatory behavior of the bad-actors that were the subject of Plaintiff's complaints, and the constructive discharge of the Plaintiff from her position as Chair.
81. As to the fourth element, a causal connection exists between the protected activity and the adverse action. The failure of the Defendant to investigate based upon Plaintiff's complaints, or to take remedial action based upon Plaintiff's complaints of discrimination, immediately resulted in the continuation of the discriminatory behavior by the bad-actors that were the subject of Plaintiff's complaints.

82. Based on the foregoing allegations, Plaintiff states a cause of action for retaliation in violation of the New York State Human Rights Law and Title VII of the Civil Rights Act of 1964 against Defendant ECC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order:

- a. Declaring that the Defendant engaged in unlawful employment practices prohibited by the New York Executive Law and applicable federal laws;
- b. Awarding Plaintiff economic, compensatory, and any other applicable damages in an amount to be proven at trial;
- c. Awarding Plaintiff attorney's fees, costs, and expenses incurred in the prosecution of this action;
- d. Awarding Plaintiff injunctive relief as this Court deems just and equitable;
- e. Awarding Plaintiff such other and further relief that this Court may deem appropriate.

Dated: January ____, 2018

Respectfully submitted,
Plaintiff Denise Wooten
By her attorneys.

THE LAW OFFICE OF LINDY KORN, PLLC

Lindy Korn, Esq.
Attorney for Plaintiff
Law Office of Lindy Korn, PLLC
Electric Tower
535 Washington Street, Ninth Floor
Buffalo, New York 14203
Telephone: (716) 856-5676
Facsimile: (716) 507-8475
lkorn@lkorn-law.com

Attachment B

Request for Preservation of Electronic and Paper Evidence for

Erie Community College

We are writing to advise you, Erie Community College (the "Employer"), of your legal obligation to preserve all relevant evidence. That evidence includes but is not limited to all email, text messages, and any other electronic communications, sent or received by any employees that involve Professor Wooten's complaints of discrimination, regard Professor Wooten's involvement with Lisa Kunkle and the certification of courses, and all other documents relevant to her claims of discrimination detailed in the complaint that was delivered to you. Employer is responsible for the preservation of any information that is reasonably calculated to lead to the discovery of information bearing on a plaintiff's claim. *Richards v. Hertz Corp.*, 2012 WL 5503841 (N.Y. App. Div. 2d Dept. Nov. 14, 2012).

It is not legally sufficient to order your staff to go through the emails of the above employees and ask them to preserve those they deem relevant. The employer is required to immediately preserve and cease the routine destruction/deletion/overwriting of all email sent to or from and/or received by all of the employees. The employer must also cease the routine destruction or overwriting of any backup tapes which could contain their emails. Any emails which are live on the employer's e-mail server must remain in reasonably accessible format. If you are not sure how to do this, we suggest you retain legal counsel.

The employer is also required to preserve all evidence, including any electronic and non-electronic evidence, concerning Professor Wooten's employment. This includes any and all information on employees' employer-issued cell phones and other electronic devices.

Modern computer forensics has made it virtually impossible to conceal alterations and destruction of evidence. A court may order the forensic evaluation of a computer if there is reason to believe a litigant has destroyed evidence. *Lifeng Chen et al. v. New Trend Apparel, Inc. et al.*, 2012 WL 4784855 (S.D.N.Y. Oct. 2, 2012). If it is forensically determined that the employer failed to preserve relevant electronically stored information, it will be responsible for the significant expense of forensically restoring such evidence. Electronically stored information cannot be permanently destroyed, but steps can be taken to make it more expensive to retrieve, and courts have not hesitated to impose the costs of such retrieval.

If you maintain insurance, including general liability, Directors and Officers, Employment Practices Liability, or other insurance which might cover these claims, its failure promptly to notify its carrier could result in a loss of coverage.



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 17, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear ~~Ms. McCarthy~~:

In compliance with the Resolution No. 306 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>Benzo, Charles, Estate of, by Michelle Benzo v. County of Erie and ECMCC</i>
Document Received:	Notice of Claim
Name of Claimant:	Michelle Benzo Administratrix for the Estate of Charles Benzo 209 Weiss Street Buffalo, New York 14206
Claimant's attorney:	R. Colin Campbell, Esq. Campbell & Associates 8274 North Main Street Eden, New York 14057

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
Michelle.Parker@erie.gov

MMP:dld
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
MICHELLE BENZO, Individually and as Administratrix of the
Estate of CHARLES R. BENZO, III,

Claimant,

-vs-

NOTICE OF CLAIM

ERIE COUNTY MEDICAL CENTER,
ERIE COUNTY MEDICAL CENTER CORPORATION, and
COUNTY OF ERIE,

Respondents.

TO: ERIE COUNTY MEDICAL CENTER
462 Grider Street
Buffalo, New York 14215

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

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

PLEASE TAKE NOTICE that the Claimant herein makes claim and demand against
ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER
CORPORATION, and COUNTY OF ERIE, as follows:

FIRST: The name and post office address of Claimant is: MICHELLE BENZO, 209
Weiss Street, Buffalo, New York 14206.

SECOND: The name and address of Claimant's attorney is: R. Colin Campbell, Esq., CAMPBELL & ASSOCIATES, 8274 North Main Street, Eden, New York 14057.

THIRD: The claim of MICHELLE BENZO, Individually and as Administratrix of the Estate of CHARLES R. BENZO, III, is for wrongful death through the malpractice of ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER CORPORATION, COUNTY OF ERIE, and their agents, servants, and/or employees. The claim arose in connection with post-surgical care and treatment of Claimant's husband, CHARLES R. BENZO, III ("decedent" or "patient"), after he underwent an anterior cervical discectomy and fusion at the C3-C6 levels. That procedure was performed on August 3, 2017 by Dr. Lindsey Clark at ERIE COUNTY MEDICAL CENTER, a facility owned and operated by ERIE COUNTY MEDICAL CENTER CORPORATION. The decedent remained in ERIE COUNTY MEDICAL CENTER until his death on August 27, 2017 of respiratory failure and brain edema.

FOURTH: Upon information and belief, CHARLES R. BENZO, III's death was caused, in whole or in part, by ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER CORPORATION, COUNTY OF ERIE, and their employees, servants, and/or agents, with no culpable conduct on the part of the Claimant or the decedent contributing thereto. It is alleged, upon information and belief, that the aforesaid recklessly, carelessly, and/or negligently: failed to meet required levels and standards of care; failed to properly hire, train, and supervise employees and staff; failed to properly monitor the patient's condition; failed to properly examine the patient; failed to observe and report relevant signs and/or symptoms; failed to properly treat, monitor, and observe the patient; failed to properly communicate and/or consult with other medical professionals; failed to provide properly trained and knowledgeable personnel; failed to recognize and address relevant symptoms; failed to properly respond to

and/or investigate patient complaints; failed to provide proper and complete post-surgical monitoring and care; failed to recognize and/or properly address patient's post-surgical edema and airway obstruction; and failed to timely and properly identify and/or respond to serious, life-threatening conditions.

FIFTH: Claimant MICHELLE BENZO was granted Letters of Limited Administration of the Estate of CHARLES R. BENZO, III by order of the Surrogate's Court for Erie County on December 15, 2017, and is presently acting in accordance with that decree. At the time of his death, CHARLES R. BENZO, III left surviving distributees, including the Claimant, MICHELLE BENZO.

SIXTH: Due to the Defendants' recklessness, carelessness, and/or negligence, the decedent, CHARLES R. BENZO, III, sustained: postsurgical edema with compromise of the upper airway and esophagus; anoxic brain injury; epidural hematoma from C2-C6; central canal stenosis; intubation and tracheostomy; cardiopulmonary arrest; and endured pain, suffering, and premature death. In addition, Claimant MICHELLE BENZO and other surviving distributees of the decedent have been deprived of his support, guidance, financial assistance, maintenance, and services, and have otherwise sustained expense, pecuniary loss, and incurred medical and funeral expenses.

The undersigned presents this claim and demand for adjustment and payment, and notifies you that unless adjusted and paid within thirty (30) days from the date of its presentation, it is the intention of the Claimant to commence an action thereon.

Dated: Eden, New York
January 9, 2018


MICHELLE BENZO, Individually
and as Administratrix of the Estate of
CHARLES R. BENZO, III


R. Colin Campbell, Esq.
CAMPBELL & ASSOCIATES
Attorneys for Claimant
8274 North Main Street
Eden, New York 14057
(716) 992-2222

VERIFICATION

STATE OF NEW YORK

)

COUNTY OF ERIE

) ss:

MICHELLE BENZO, Individually and as Administratrix of the Estate of CHARLES R. BENZO, III, being duly sworn, deposes and says that she is the claimant in the within action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.


MICHELLE BENZO, Individually
and as Administratrix of the Estate of
CHARLES R. BENZO, III

Sworn to before me on
January 9, 2018.


Notary Public

R. COLIN CAMPBELL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 22, 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, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>Boyland, Tobias v. Sheriff Howard, et al.</i>
Document Received:	Order to Show Cause
Name of Claimant:	Tobias Boyland #10-B-1086 Attica Correctional Facility
Claimant's attorney:	Norman P. Effman, Esq. Wyoming County-Attica Legal Aid Bureau, Inc. 18 Linwood Avenue Warsaw, New York 14569

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
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

STATE OF NEW YORK
SUPREME COURT

COUNTY OF WYOMING

In the Matter of the Application of
TOBIAS BOYLAND, #10-B-1086,

Petitioner,

-v-

ORDER TO SHOW CAUSE

Index No. *21911-18*

TIMOTHY B. HOWARD, Erie County Sheriff,

THOMAS DIINA, Superintendent
Jail Management Division
Erie County Sheriff's Office,

ANTHONY ANNUCCI, Acting Commissioner
NYS Dept. of Corrections and
Community Supervision,

Respondents.

FOR RELIEF PURSUANT TO ARTICLE 78 CPLR

Upon the Amended Petition of Leah Rene Nowotarski, Esq., sworn to on the 5th day of January, 2018, and the pro se petition of Tobias Boyland, it is hereby,

ORDERED that Petitioner is entitled to poor person relief under the terms and conditions of the Court's attached Order and is granted such privileges as are authorized in CPLR Section 1102 and that the Wyoming County-Attica Legal Aid Bureau is assigned to represent Petitioner, and it is further

ORDERED that the above named Respondent show cause at a Special Term of the Court on March 1, 2018, at the Wyoming County Supreme Court, 147 North Main Street, Warsaw, New York or as soon thereafter as counsel can be heard, why judgment should not be made granting the relief demanded in the petition and why such other and further relief as may seem just and proper to the Court should not be allowed; and it is further,

ORDERED that service of this Order and the papers upon which it was granted, upon Respondent Howard at the Erie County Sheriff's Department, 10 Delaware Avenue, Buffalo, New York 14202, and Respondent Diina, at 40 Delaware Avenue, Buffalo, New York 14202 and Respondent Howard and Diina's counsel Michael Siragusa, Erie County Attorney, at the Edward A. Rath County Office Building, Room 1634, 95 Franklin Street, Buffalo, New York 14202 and Respondent Annucci at the State Office Building Campus, Albany, New York 12226, and Respondent Annucci's counsel at the office of the New York State Attorney General, 350 Main Street Buffalo, New York 14202 by regular mail or "fax" by the ^{2nd} day of *February*, 2018 be deemed good and sufficient service. Service by mail shall be considered complete upon mailing.

DATED: *1-8-18*
Warsaw, New York

s/ Michael M. Mohun
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT

:

COUNTY OF WYOMING

In the Matter of the Application of
TOBIAS BOYLAND, #10-B-1086,

Petitioner,

-v-

AFFIDAVIT

TIMOTHY B. HOWARD, Erie County Sheriff,

THOMAS DIINA, Superintendent
Jail Management Division
Erie County Sheriff's Office

ANTHONY ANNUCCI, Acting Commissioner
NYS Dept. of Corrections and
Community Supervision,

Respondents.

STATE OF NEW YORK)
COUNTY OF WYOMING) ss:
VILLAGE OF WARSAW)

LEAH RENE NOWOTARSKI, being duly sworn, deposes and
says:

1. I am the attorney for the Petitioner in the above
entitled action, and have familiarized myself with the file. I
am of the opinion that the petition states a cause of action.

2. Petitioner is, at the time of writing, an inmate
at the Attica Correctional Facility in the State of New York.

3. The instant petition pursuant to Article 78 seeks
an Order granting Petitioner full credit towards his sentence for
time that the Petitioner was held in Allegheny County,
Pennsylvania and in Erie County, New York.

4. Petitioner seeks to proceed by Order To Show Cause so as to authorize him to effect service upon the Respondent and Respondent's counsel by regular mail or "fax". This will result in substantial savings in travel costs and expenses related to service of these papers.

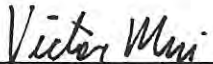
5. No prior application has been made for the relief requested herein.

7. No other person is beneficially interested in the relief which Petitioner seeks.

WHEREFORE, it is respectfully requested that this Court issue an Order to direct Respondent to show cause on _____ as to why an Order should not be made pursuant to Article 78 of the CPLR granting the relief requested.


LEAH RENE NOWOTARSKI
Senior Parole Litigation Attorney

Sworn to before me this
5th day of January, 2018.


NOTARY PUBLIC

VICTOR MUI
Notary Public, State of New York
No. 02MU6329859
Qualified in Monroe County
Commission Expires August 31, 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

January 22, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>Ososki, Carolyn v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Carolyn Ososki 53 Amy Drive Tonawanda, New York 14150
Claimant's attorney:	Bethany A. Rubin, Esq. Andrews, Bernstein, Maranto & Nicotra PLLC 420 Franklin 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*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

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

CAROLYN OSOSKI,
53 Amy Drive
Tonawanda, New York 14150

Claimant,

NOTICE OF CLAIM

vs.

HOOVER MIDDLE SCHOOL
249 Thorncliff Road
Buffalo, New York 14223,

KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DSITRICT
1500 Colvin Boulevard
Buffalo, New York 14223,

TOWN OF TONAWANDA
2919 Delaware Avenue #14
Buffalo, New York 14217,

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

Respondents.

PLEASE TAKE NOTICE, Claimant, CAROLYN OSOSKI, hereby intends to file a claim against HOOVER MIDDLE SCHOOL, the KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DSITRICT, the TOWN OF TONAWANDA, and the COUNTY OF ERIE and in support of said claim states the following:

1. The Post Office address of the Claimant, CAROLYN OSOSKI is 53 Amy Drive, Tonawanda, New York 14150.
2. The attorneys for the Claimant are Andrews, Bernstein, Maranto, & Nicotra, PLLC, 420 Franklin Street, Buffalo, New York 14202, Telephone (716) 842-2200.
3. The Claim arose as follows: On October 26, 2017, Claimant CAROLYN OSOSKI, was walking into HOOVER MIDDLE SCHOOL, when she was caused to trip

and fall on a walkway in disrepair. A photograph of the aforementioned walkway is attached hereto as Exhibit "A". Upon information and belief, HOOVER MIDDLE SCHOOL is owned, operated, supervised and maintained by the KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT, the TOWN OF TONAWANDA, and/or the COUNTY OF ERIE.

4. This incident was caused by the negligence, carelessness, and recklessness on the part of HOOVER MIDDLE SCHOOL, the KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT, the TOWN OF TONAWANDA, and/or the COUNTY OF ERIE and/or their agents, servants and/or employees as follows:

- a) These respondents and/or their agents, servants or employees were negligent in maintaining a dangerous and hazardous condition on the premises;
- b) These respondents and/or their agents, servants, or employees were negligent in failing to maintain the premises in a reasonable and safe condition;
- c) These respondents and/or their agents, servants, or employees were negligent in failing to remedy the aforesaid condition;
- d) These respondents and/or their agents, servants, or employees were negligent in failing to warn the plaintiff of the dangerous and hazardous conditions in the subject of the premises;
- e) These respondents and/or their agents, servants, or employees were negligent in failing to erect signs in or near the hazardous conditions

- f) These respondents and/or their agents, servants, or employees were negligent in failing to inspect the premises;
- g) These respondents and/or their agents, servants, or employees were negligent in failing to take proper measures to correct the dangerous condition in the subject area;
- h) These respondents and/or their agents, servants, or employees were negligent in failing to observe the dangerous condition in the subject area;
- i) These respondents and/or their agents, servants, or employees were negligent in allowing the walkway to go into disrepair and separate;
- j) These respondents and/or their agents, servants, or employees were negligent in failing to fix the dilapidated walkway;
- k) These respondents and/or their agents, servants, or employees were negligent in failing to observe the dangerous conditions in the subject area; and
- l) These respondents and/or their agents, servants, or employees were otherwise negligent.

5. This claim is for personal injuries, conscious physical, and emotional pain and suffering, medical expenses, as well as consequential damages.

6. By virtue of the negligence, carelessness and recklessness of HOOVER MIDDLE SCHOOL, the KENMORE-TOWN OF TONAWANDA UNION FREE

SCHOOL DISTRICT, the TOWN OF TONAWANDA, and/or the COUNTY OF ERIE, Claimant, CAROLYN OSOSKI, was caused to suffer serious, significant and permanent injuries from this incident, including injuries to her head and feet. Claimant, CAROLYN OSOSKI, also suffered other injuries and complications as yet undetermined as a result of this accident, and by reason of the same, Claimant sustained damages in an amount which cannot be reasonably calculated at this time.

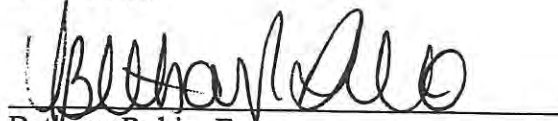
7. By virtue of the negligence, carelessness, and recklessness of HOOVER MIDDLE SCHOOL, the KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT, the TOWN OF TONAWANDA, and/or the COUNTY OF ERIE, Claimant has also incurred hospital and medical expenses, loss of income and other necessary related expenses, the amount of which is undetermined to date.

WHEREFORE, claimant request that HOOVER MIDDLE SCHOOL, the KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT, the TOWN OF TONAWANDA, and/or the COUNTY OF ERIE compensate Claimant, CAROLYN OSOSKI, for her injuries.

Dated: Buffalo, New York
January 16, 2018

Yours, etc.,

By:



Bethany Rubin, Esq.

ANDREWS, BERNSTEIN & MARANTO, LLP

Attorney for the Plaintiff

420 Franklin Street

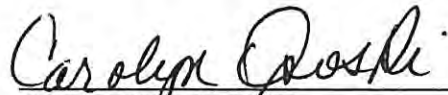
Buffalo, New York 14202

(716) 842-2200

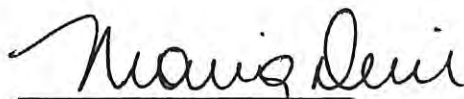
VERIFICATION

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

CAROLYN OSOSKI, being duly sworn, deposes and says that she is the Claimant in this action for herself and as parent and natural guardian of Claimant, CAROLYN OSOSKI; that she has read the foregoing Notice of Claim in this action and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes them to be true.


CAROLYN OSOSKI

Sworn to before me this 19
day of January, 2018


Notary Public

MARIA DUIC
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DU6349626
Qualified In Niagara County & Erie
My Commission Expires 10-24-2020

Exhibit “A”





MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 24, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Mr. Graber
Dear Ms. McCarthy:

In compliance with the Resolution No. 306 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>Montour, Destin and Kristin Montour as png v. William Abbott, et al. and Sheriff Howard</i>
Document Received:	Summons and Complaint
Name of Claimant:	Destin Montour & Kristen Montour (png) 124 Hawk Meadows Drive Brant, New York 14081
Claimant's attorney:	Michael L Kobiolka, Esq. 8025 Boston State Road Hamburg, New York 14075

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle M. Parker*
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

RECORDED
ERIE COUNTY
SHERIFF'S OFFICE

2018 JAN 18 10:10:53

DESTIN W. MONTOUR, INDIVIDUALLY,
KRISTEN MONTOUR, INDIVIDUALLY
and as the PARENT AND NATURAL GUARDIAN OF
DESTIN W. MONTOUR

Plaintiffs,

-against-

WILLIAM M. ABBOTT,
TIMOTHY D. CHRISTIAN,
JUSTIN HYDE,
TIMOTHY HOWARD
as SHERIFF OF ERIE COUNTY, NEW YORK,
NORFOLK SOUTHERN RAILWAY COMPANY
A Foreign Business Corporation

Defendants.

SUMMONS

Index No.: 2018/000688

FILED

ACTIONS & PROCEEDINGS

JAN 17 2018

ERIE COUNTY
CLERK'S OFFICE

TO THE ABOVE NAMED DEFENDANTS:

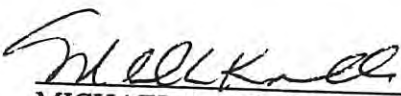
YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the Plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint.

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 provided 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.

Plaintiff designates Erie County as the place of trial. Venue is based on the Defendant's residence.

DATED: Hamburg, New York
January 17th 2018


MICHAEL L. KOBIOLKA, ESO.
Attorney for Plaintiffs
Office and Post Office Address
8025 Boston State Road
Hamburg, New York 14075
(716) 941-6460

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DESTIN W. MONTOUR, INDIVIDUALLY,
KRISTEN MONTOUR, INDIVIDUALLY and
As the PARENT AND NATURAL GUARDIAN
Of DESTIN W. MONTOUR
124 Hawk Meadows Drive
Brant, New York 14081

Plaintiffs,

-against-

WILLIAM M. ABBOTT
11 Bison Parkway
Cheektowaga, New York 14227; and

TIMOTHY D. CHRISTIAN
10 Delaware Avenue
Buffalo, New York 14202; and

JUSTIN HYDE
10 Delaware Avenue
Buffalo, New York 14202; and

TIMOTHY HOWARD
as SHERIFF OF ERIE COUNTY, NEW YORK
10 Delaware Avenue
Buffalo, New York 14202; and

NORFOLK SOUTHERN RAILWAY COMPANY
A Foreign Business Corporation
11 Bison Parkway
Cheektowaga, New York 14227

Defendants.

COMPLAINT

Index No.: 2018/800688

FILED

ACTIONS & PROCEEDINGS

JAN 17 2018

ERIE COUNTY
CLERK'S OFFICE

Plaintiffs, by their attorney, Michael L. Kobiolka, Esq. complaining of
Defendants WILLIAM M. ABBOTT, TIMOTHY D. CHRISTIAN, JUSTIN HYDE,
NORFOLK SOUTHERN RAILWAY COMPANY, a Foreign Business Corporation
and **TIMOTHY HOWARD** as Sheriff of Erie County, New York, alleges as follows:

PARTIES

1. At all times mentioned hereinafter, Plaintiff, **Kristen Montour**, is an individual residing in the Town of Brant, County of Erie, State of New York and is the parent and natural guardian of Destin W. Montour.
2. At all times prior to August 4, 2017 mentioned herein, Plaintiff, **Destin W. Montour** was an infant under the age of 18 years residing with his parent, **Kristen Montour** in the Town of Brant, New York, and is a member of the Seneca Nation of Indians, residing on Seneca Nation Lands.
3. Upon information and belief, Defendant, **William M. Abbott**, is and was at all times mentioned hereinafter employed by Defendant **Norfolk Southern Railway Company** as a Special Agent for the Norfolk Southern Railroad Police Department, with offices at 11 Bison Parkway, Cheektowaga, NY.
4. Upon information and belief, Defendant **Norfolk Southern Railway Company** is a Foreign Corporation registered to do business in the State of New York, with offices at 11 Bison Parkway, Cheektowaga, New York.
5. **Timothy B. Howard**, is and at all times was the Sheriff of the Erie County Sheriff's Department with offices located at 10 Delaware Avenue, Buffalo, New York 14202.
6. At all times mentioned hereinafter, Defendants, **Justin Hyde and Timothy D. Christian**, acted individually and as Deputies employed by the Erie County Sheriff, acting as the Erie County Sheriff's Office's employees and agents

BACKGROUND FACTS.

7. On January 19, 2017 the Plaintiff, **DESTIN W. MONTOUR**, was riding as a passenger in a vehicle driven by John Printup on the western end of Milestrip Road (0 Milestrip Road) where it intersects with the railroad tracks in the Town of Brant, NY, at approximately 2:30 a.m. in the morning.
8. As is usual and customary for members of the Seneca Nation, the Plaintiff, **DESTIN W. MONTOUR**, was exercising his Native American Rights to hunting and fishing on Nation (Reservation) lands by checking the hunting traps which he had set earlier that day.
9. That at that time and place, the vehicle the Plaintiff, **DESTIN W. MONTOUR**, was riding in was stopped by two (2) Deputies from the Erie County Sheriff's Office, who the Plaintiff, **DESTIN W. MOUTOUR**, later learned were Defendants, **Timothy D. Christian and Justin Hyde**, Deputies from the Erie County Sheriff's Office.

10. That at the time the **Plaintiff's, DESTIN W. MONTOUR**, vehicle was stopped, the driver John Printup, had not violated any V&T Laws of the State of New York and the **Plaintiff** and John Printup had not committed any other offense.

11. Upon being stopped, **Defendant, TIMOTHY CHRISTIAN**, approached the **Plaintiff's** side of the Vehicle, with his vehicle lights shining in the **Plaintiff's** eyes, withdrew his revolver from his holster, which the **Plaintiff, DESTIN W. MONTOUR**, believed to be loaded, and shouted "**GIVE ME THE F----IN DRUGS**".

12. The **Plaintiff, DESTIN W. MONTOUR**, advised the **Defendant, Christian**, that he did not have any drugs and the **Defendant, Christian**, while still holding the revolver said repeatedly "**GIVE ME THE DRUGS**".

13. The **Plaintiff, DESTIN W. MONTOUR**, told the **Defendant, Christian**, again that he did not have any drugs on him or in the vehicle.

14. The **Defendant, Christian**, then physically pulled the **Plaintiff, DESTIN W. MONTOUR**, out of the vehicle, threw him to the ground, face first, knelt on his head and back and put handcuffs on the **Plaintiff**, causing multiple injuries to the **Plaintiff, DESTIN W. MONTOUR**.

15. The **Defendants, Christian and Hyde**, placed the **Plaintiff, DESTIN W. MONTOUR**, under arrest and charged the **Plaintiff** with violation of NYS Penal Law Section 140.10----**CRIMINAL TRESPASS 3RD DEGREE**, for "**knowingly enters or remains unlawfully...upon real property which consists of a right of way or yard of a railroad...which has been designated and conspicuously posted as a no-trespass railroad zone**".

16. The criminal charge filed in this case alleged that the minor **Plaintiff, DESTIN W. MONTOUR**, trespassed on the railroad property at the address of "**0 Milestrip Extension Road in the Town of Brant**". That address is Seneca Nation Tribal Land.

17. On the same day that the minor **Plaintiff, DESTIN W. MONTOUR**, was arrested and charged with the aforesaid criminal offense, the **Defendant, NORFOLK SOUTHERN RAILWAY COMPANY**, filed a sworn Supporting Deposition against the minor **Plaintiff, DESTIN W. MONTOUR**, by and through their Special Agent for the NSRPD, **Defendant William M. Abbott**.

18. That upon information and belief, the Sworn Supporting Deposition filed by the agent for the **Defendant, NSRW**, contained false allegations which formed the basis of the prosecution of the **Plaintiff, DESTIN W. MONTOUR**, in that, the real property which the minor defendant was accused of trespassing on, was not "**owned by Norfolk Southern Corporation**" nor was it "**clearly marked with 'No Trespass' signs**".

19. That at all times mentioned herein, the minor **Plaintiff, DESTIN W. MONTOUR**, was on Seneca Nation Land and the only sign that was present, was one that said **Seneca Nation Tribal Land**.

20. That the criminal information filed by the **Defendants, Timothy Christian and Justin Hyde** of the Erie County Sheriff's Office and the Sworn Affirmation filed by the **Defendant, Norfolk Southern Railway Company**, by and through their Special Agent **William M. Abbott**, prayed "**that the defendant (Plaintiff) be dealt with in accordance with the law**".

21. After his arrest and handcuff at the scene, the **Plaintiff, DESTIN W. MONTOUR**, was transported to the Erie County Sheriff's substation in North Collins, NY.

22. There the minor **Plaintiff, DESTIN W. MONTOUR**, was booked, fingerprinted, searched, interrogated and ordered to appear in Brant Court on February 16, 2017 to answer the pending charges.

23. That the minor **Plaintiff, DESTIN W. MONTOUR**, appeared in Brant Court on several occasions and remained subject to the jurisdiction of the Court until the charges against the **Plaintiff** were dismissed by the Court on Thursday, October 12, 2017.

24. That the Notice of Claim was presented to the Erie County Sheriff Office on January 9, 2018 and the Sheriff has refused or neglected to make any adjustments or payments thereof.

AS AND FOR A FIRST CAUSE OF ACTION FOR ASSAULT AND BATTERY

25. Plaintiff repeats and re-alleges Paragraphs "1" through "24" of this Complaint and further states and alleges:

26. That on or about January 19, 2017, Erie County Deputy Sheriffs, **defendant, Timothy D. Christian, and defendant, Justin Hyde**, individually and while in the course and scope of their employment with the **Erie County Sheriff's Department**, and acting under authority of the County, stopped the vehicle in which the minor **Plaintiff, DESTIN W. MONTOUR**, was riding and, without plaintiff's consent, willfully, wantonly, maliciously, and intentionally committed assault and battery upon **Plaintiff, DESTIN W. MONTOUR**.

27. That the acts and conduct constituting the assault and battery consisted in part of the following: violently threatening Plaintiff with physical harm; intentionally attempting to cause injury to Plaintiff; perpetrating a vicious assault and battery against Plaintiff by drawing a gun on the Plaintiff; placing Plaintiff in handcuffs without reason or cause; using unreasonable, unnecessary and excessive force against Plaintiff; exercising unreasonable, unnecessary and excessive force during the course of an

investigation; committing an unjustified arrest of Plaintiff; carelessly employing the use of force in arresting Plaintiff; committing a harmful, offensive and nonconsensual attack upon Plaintiff's person; acting outside the scope and authority of prescribed powers and duties; unlawfully interfering with Plaintiff's right to proceed lawfully about his business; and otherwise using great and threatening force and violence against **Plaintiff, DESTIN W. MONTOUR**.

28. That as a direct, sole and proximate result of the assault and battery, **Plaintiff, DESTIN W. MONTOUR**, was caused to and did sustain serious, disabling and permanent personal injuries; pain and suffering, humiliation and embarrassment, emotional and mental distress, inconvenience, medical expenses, and loss of personal and business income.

29. By reason of the foregoing, **Plaintiff, DESTIN W. MONTOUR**, has been injured and damaged in an amount which exceeds jurisdiction of all lower Courts otherwise having jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION FOR PUNITIVE DAMAGES

30. **Plaintiff, DESTIN W. MONTOUR**, repeats and realleges each and every allegation contained in Paragraphs 1 through 29 of this Complaint with the same force and effect as if more fully set forth herein.

31. That the actions of the **Deputies, Timothy D. Christian, Justin Hyde, and the Erie County Sheriff**, their employer, in assaulting and battering the minor Plaintiff were so outrageously, willfully malicious and without just cause or provocation that the Plaintiff seeks punitive damages in an amount to be set by the Court.

AS AND FOR A THIRD CAUSE OF ACTION FOR FALSE ARREST AND FALSE IMPRISONMENT

32. **Plaintiff, DESTIN W. MONTOUR**, repeats and realleges paragraphs 1 through 31 of his Complaint and further states and alleges:

33. That on or about January 19, 2017, **Erie County Deputy Sheriffs, Timothy D. Christian and Justin Hyde**, individually and while in the course and scope of their employment with the **Erie County Sheriff's Department**, and acting under authority of the County, falsely arrested and imprisoned the minor, **Plaintiff, DESTIN W. MONTOUR**, without warrant, authority of law or probable cause therefor.

34. That the acts and conduct constituting the false arrest and false imprisonment consisted in part of the following: unlawfully and intentionally detaining and confining **Plaintiff, DESTIN W. MONTOUR**, against his will and without his consent; unlawfully and intentionally detaining and confining Plaintiff without privilege, probable cause or valid legal process; unlawfully detaining and confining Plaintiff through the unlawful arrest of Plaintiff; unlawfully detaining and confining Plaintiff through the use of force;

unlawfully arresting Plaintiff and placing Plaintiff in handcuffs without reasonable cause therefor, and committing such other acts resulting in the unlawful arrest and imprisonment of **Plaintiff, DESTIN W. MONTOUR**.

35. That the further acts and conduct which constitute the false arrest and false imprisonment of the minor **Plaintiff, DESTIN W. MONTOUR**, consisted in part of the defendant **WILLIAM M. ABBOTT, Special Agent for Norfolk Southern Railway Company**, filing a false instrument with the Erie County Sheriff's Office alleging that the **Plaintiff, DESTIN W. MONTOUR**, trespassed on land owned by the **Norfolk Southern Railway Company** knowing it to be false and encouraging, promoting the false arrest, imprisonment and malicious prosecution of the Plaintiff.

36. That Plaintiff, **DESTIN W. MONTOUR**, was conscious of the false arrest and confinement.

37. That as a direct, sole and proximate result of the false arrest and imprisonment, **Plaintiff, DESTIN W. MONTOUR**, was caused to and did sustain humiliation and embarrassment, emotional and mental distress, moral and mental degradation, indignity and disgrace, injury to personal and business reputation, inconvenience, disturbance and disruption of life, and loss of personal income.

38. By reason of the foregoing, **Plaintiff, DESTIN W. MONTOUR**, has been injured and damaged in an amount which exceeds the jurisdiction of all lower Courts otherwise having jurisdiction.

**AS AND FOR A FOURTH CAUSE OF
ACTION FOR PUNITIVE DAMAGES**

39. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 38 of this Complaint with the same force and effect as if more fully stated herein.

40. The actions of the defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, and the Defendant, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, were so outrageous, willfully malicious and without just cause or provocation, that the Plaintiff seeks punitive damages in an amount to be set by the Court.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR MALICIOUS
PROSECUTION**

41. Plaintiff, **DESTIN W. MONTOUR**, repeats and realleges each and every allegation contained in Paragraphs 1 through 40 of this Complaint with the same force and effect as if more fully stated herein.

42. That on or about January 19, 2017 the Defendants, **Timothy D. Christian, Justin Hyde**, and their employer, **Erie County Sheriff's Department**, maliciously and without reasonable or probable cause therefor arrested, imprisoned and caused an appearance ticket to be issued to the **minor Plaintiff, DESTIN W. MONTOUR**, requiring his attendance in Brant Town Court.

43. That upon information and belief on or about the same day the minor Plaintiff, **DESTIN W. MONTOUR**, was arrested, January 19, 2017, **William M. Abbott**, Special Agent for the Norfolk Southern Railway Company, acting individually and on behalf of his employer, **Norfolk Southern Railway Company**, filed a Supporting Deposition which he knew to be false, alleging that the minor Plaintiff, **DESTIN W. MONTOUR**, violated Section 140.10 G of the NYS Penal Law, a misdemeanor.

44. Upon information and belief, the summons and appearance ticket were issued based upon the instigation and investigation of defendants **Timothy D. Christian, Justin Hyde, the Erie County Sheriff's Department, William M. Abbott, Special Agent and Norfolk Southern Railway Company**, in which they falsely, maliciously and without probable reason or cause sought to inculcate the minor Plaintiff, **DESTIN W. MONTOUR**, in criminal actions in which Plaintiff, **DESTIN W. MONTOUR**, did not participate.

45. Thereafter, on or about October 12, 2017, the charges against the Plaintiff, **DESTIN W. MONTOUR**, were dismissed in open Court.

46. By reason of the aforesaid charges and malicious prosecution of the minor Plaintiff, **DESTIN W. MONTOUR**, by the defendants, **Timothy D. Christian, Justin Hyde, Erie County Sheriff's Department, William M. Abbott, Special Agent and Norfolk Southern Railway Company**, Plaintiff was subjected to indignity and humiliation, pain and distress of mind and body, was prevented from attending to his usual duties and occupation, and was subjected to expense in the procurement and services of counsel and was otherwise injured in good name and reputation, all to his damage in an amount which exceeds the jurisdiction of all lower courts otherwise having jurisdiction.

AS AND FOR A SIXTH CAUSE OF ACTION FOR PUNITIVE DAMAGES

47. Plaintiff, **DESTIN W. MONTOUR**, repeats and realleges each and every allegation contained in Paragraphs 1 through 46 of this Complaint with the same force and effect as if more fully stated herein.

48. The actions of the defendants, **Timothy D. Christian, Justin Hyde and their employer, Erie County Sheriff's Department, and the Defendant, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, were so outrageous, willfully malicious and without just cause or provocation, in maliciously prosecuting the minor Plaintiff, **DESTIN W. MONTOUR**, that the Plaintiff, **DESTIN W. MONTOUR**, seeks punitive damages in an amount to be set by the Court.

**AS AND FOR A SEVENTH CAUSE OF ACTION FOR INTERFERENCE WITH
HUNTING AND FISHING RIGHTS**

49. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 48 of this Complaint with the same force and effect as if more fully stated herein.

50. That the Plaintiff, **DESTIN W. MONTOUR**, as a member of the Seneca Nation has inherent rights to hunt and fish on Nation Lands in New York State, guaranteed by the U.S. Government and recognized by New York State.

51. That the actions of the Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, on January 19, 2017 without reason or cause, intentionally, maliciously and to the detriment of the Plaintiff interfered with the hunting and fishing rights of the Plaintiff on Seneca lands.

52. That by reason of the aforesaid interference by the Defendants, the Plaintiff was denied his hunting and fishing rights and the Plaintiff, **DESTIN W. MONTOUR**, was subject to indignity and humiliation, pain and distress of mind and body and otherwise injured in his good name and reputation.

53. That the damages sought in this cause exceed the jurisdiction limits of all lower Courts which would otherwise have jurisdiction.

AS AND FOR AN EIGHTH CAUSE OF ACTION FOR PUNITIVE DAMAGES

54. Plaintiff **DESTIN W. MONTOUR**, repeats and realleges each and every allegation contained in Paragraphs 1 through 53 of this Complaint with the same force and effect as if more fully stated herein.

55. The actions of the defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, and the Defendant, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, were so outrageous, willfully malicious and without just cause or provocation, that the Plaintiff seeks punitive damages in an amount to be determined by the Court.

**AS AND FOR A NINTH CAUSE OF ACTION FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

56. Plaintiff, **DESTIN W. MONTOUR**, repeats and realleges each and every allegation contained in Paragraphs 1 through 55 of this Complaint with the same force and effect as if more fully stated herein.

57. Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, conduct resulted in the intentional infliction of emotional distress upon Plaintiff.

58. In assaulting and battering, falsely imprisoning, maliciously prosecuting and filing false documents against the Plaintiff, Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, conduct resulted in a traumatic event which caused Plaintiff to fear for his own safety.

59. As a police officer charged with enforcing the law, Defendants, **Timothy D. Christian and Justin Hyde**, owed a duty to Plaintiff to act in accordance with their role as a police officer, and to keep citizens such as Plaintiff free from assault and battery, false imprisonment and otherwise grossly offensive touching.

60. Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, breached the aforementioned duty by causing Plaintiff to reasonably believe that his physical safety was in danger and caused Plaintiff to fear for his own safety.

61. As a result of Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, infliction of emotional distress upon Plaintiff, Plaintiff has been injured, all in an amount to be determined by the Court.

AS AND FOR A TENTH CAUSE OF ACTION FOR PUNITIVE DAMAGES

62. Plaintiff, **DESTIN W. MONTOUR**, repeats and realleges each and every allegation contained in Paragraphs 1 through 61 of this Complaint with the same force and effect as if more fully stated herein.

63. The actions of the defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, and the Defendant, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, were so outrageous, willfully malicious and without just cause or provocation, that the Plaintiff seeks punitive damages in an amount to be set by the Court.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

64. Plaintiff, **KRISTEN MONTOUR** repeats and realleges each and every allegation contained in Paragraphs 1 through 63 of this Complaint with the same force and effect as if more fully stated herein.

65. That as a result of the actions of Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, Plaintiff has been deprived of services, society and companionship of her minor son, Plaintiff **DESTIN W. MONTOUR** herein, and believes she will be so deprived in the future.

66. That by reason of the foregoing, Plaintiff, **KRISTEN MONTOUR**, has been obliged to render aid, comfort and services to and have become obligated for medical aid, expenses and attention in an effort to cure Plaintiff's injuries and Plaintiff believe that in the future she will be further obligated to render aid and services and to expend monies therefor.

67. That the amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

AS AND FOR A TWELFTH CAUSE OF ACTION BASED ON NEGLIGENCE

68. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 67 of this Complaint with the same force and effect as if more fully set forth herein.

69. The Plaintiff, **DESTIN W. MONTOUR**, alleges that the actions or inactions of all of the Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, as previously alleged herein were in the alternative the result of the negligence, recklessness and carelessness on behalf of the Defendants.

70. That the negligent, reckless and careless actions or inactions of the Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company** resulted in the Plaintiff being assaulted, battered, falsely arrested, falsely imprisoned, maliciously prosecuted, intentional infliction of mental distress and having his tribal hunting and fishing rights interfered with.

71. That the actions of the Defendants, **Timothy D. Christian, Justin Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company**, were the direct and proximate cause of the injuries to the Plaintiff as previously set forth herein.

72. That the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiffs, **DESTIN W. MONTOUR, and KRISTEN MONTOUR**, demand judgment against Defendants, **Timothy D. Christian, Justin**

Hyde, and their employer, Erie County Sheriff's Department, William M. Abbott, Special Agent, and his employer, Norfolk Southern Railway Company, as follows:

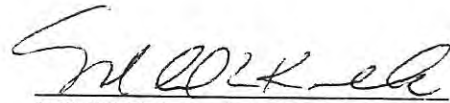
1, For recovery against the Defendants in an amount which would fully and fairly compensate Plaintiffs for these damages.

2, For recovery against the Defendants for punitive damages for the outrageous, willful and malicious conduct of the Defendants against the Plaintiff in an amount to be determined by the Court.

3. For trial by jury on all triable issues.

4. The costs and disbursements of this action and any other further relief as to which this Court deems just and proper.

DATED: Hamburg, New York
January 17th 2017


MICHAEL L. KOBIOLKA, ESQ.
Attorney for Plaintiffs
8025 Boston State Road
Hamburg, NY 14075
(716) 941-6460



MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 25, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

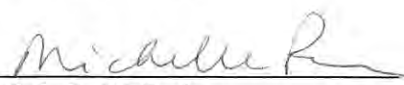
In compliance with the Resolution No. 306 passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Camacho, Julio Cruz v. County of Erie and ECSO</i>
Document Received:	Notice of Claim
Name of Claimant:	Julio Cruz Camacho 715 Prospect Avenue Buffalo, New York 14213
Claimant's attorney:	Nelson S. Torre, Esq. 438 Main Street - Suite 910 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
Michelle.Parker@erie.gov

MMP:dld
Enc.

Comm. 4D-2

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JULIO CRUZ CAMACHO
715 Prospect Avenue
Buffalo, New York 14213

Claimant,

NOTICE OF CLAIM
GENERAL MUNICIPAL LAW § 50-e

-VS-

COUNTY OF ERIE and
ERIE COUNTY SHERIFF'S DEPARTMENT
Buffalo, New York 14202

Respondents.

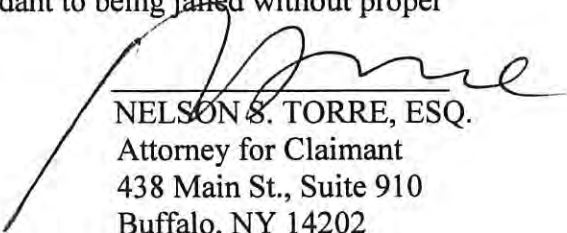
SIRS/MADAMES:

PLEASE TAKE NOTICE, that JULIO CRUZ CAMACHO, 715 Prospect Ave, Buffalo, NY 14213, is the claimant herein and is represented by NELSON S. TORRE, ESQ. Attorney at law, at 438 Main St., Suite 910, Buffalo, New York, 14202.

That on November 14, 2017, Claimant was falsely arrested, unlawfully imprisoned, and maliciously prosecuted by the COUNTY OF ERIE and the ERIE COUNTY SHERIFF'S DEPARTMENT. The Respondents knew or should have known that Claimant was falsely arrested and detained wrongfully and unlawfully by their agents, servants, and employees. Claimant JULIO CRUZ CAMACHO was wrongfully and unlawfully arrested and imprisoned under the name Antonio Sanchez and ultimately released after four (4) days in jail, when the charges ended in failure. Claimant was falsely arrested and placed into custody without probable cause or lawful justification by Respondents and maliciously prosecuted until his exoneration and release. The Respondents and their agents, and employees knew or should have known that Claimant JULIO CRUZ CAMACHO was not the same person as Antonio Sanchez, and nevertheless wrongfully held him under such identity without proper cause.

Damages or injuries claimed to have been sustained, but not including amount of damages sought: The claimant suffered physical and consequential damages and injury as a result of the foregoing and through no fault of his own, including monetary, exemplary, and other damages, and indignities attendant to being jailed without proper cause.

DATED: January 11, 2018
Buffalo, New York


NELSON S. TORRE, ESQ.
Attorney for Claimant
438 Main St., Suite 910
Buffalo, NY 14202
716-854-2808

This paper received at the
Erie County Attorney's Office
from Dumnick Bo on
the 24th day of January 2018
at 120 a.m./p.m.
Mary K. L...
Assistant County Attorney

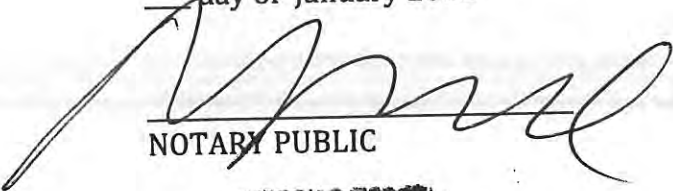
VERIFICATION

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

That Claimant, JULIO CRUZ CAMACHO , being duly sworn, deposes and says that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true upon information and belief, or upon my personal knowledge where so stated.


JULIO CRUZ CAMACHO

Sworn to before me this
— day of January 2018


NOTARY PUBLIC

NELSON S. TORRE
Notary Public, State of New York
Qualified in Erie County
Commission Expires May 9 2018



MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 25, 2018

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

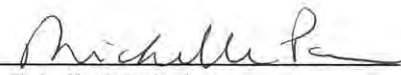
In compliance with the Resolution No. 306 passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Mineo, Lisa v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Lisa Mineo 266 Central Avenue, Apt. 11 Lancaster, New York 14086
Claimant's attorney:	William A. Lorenz, Jr., Esq. Hogan Willig 2410 North Forest Road Getzville, New York 14068

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld
Enc.

STATE OF NEW YORK: COUNTY OF ERIE

In the Matter of the Claim of

LISA MINEO

NOTICE OF CLAIM

Claimant,

-against-

COUNTY OF ERIE

Respondent

TO: COUNTY OF ERIE

PLEASE TAKE NOTICE, the Claimant herein hereby makes a claim and demand against the CITY OF BUFFALO, CITY OF BUFFALO POLICE DEPARTMENT, pursuant to § 50-e of the General Municipal law.

1. **The names and post-office addresses of the Claimant and his attorneys are:**

CLAIMANT

Lisa Mineo
266 Central Avenue, Apt. 11
Lancaster, New York 14086

ATTORNEYS

William A. Lorenz, Jr., Esq.
HOGANWILLIG, PLLC
2410 North Forest Road, Suite 301
Getzville, New York 14068

2. **The nature of the claim:**

Action for the recovery of damages due to injuries sustained by the Claimant in an amount as yet to be determined, resulting from the failure to protect a prisoner in Respondent's custody, failure to prevent the injury of Claimant, and resulting economic loss, special damages, pain and suffering, and other damages sustained by Claimant as a result of the intentional and/or

{H1837043.1}

HOGANWILLIG

Attorneys at Law

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

Comm. 4D-2

85 of 88

negligent, careless, reckless, and otherwise tortious conduct of the COUNTY OF ERIE, and/or its agents, servants, or employees, as further set forth below.

3. **The date, time when, the place where and the manner in which the claim arose is as follows:**

On Wednesday, October 25, 2017, Claimant was arrested and taken into custody at the Erie County Holding Center. Claimant remained in custody until Monday, October 30, 2017, when she was picked up and transported to White Deer Run in Pennsylvania, to begin a drug treatment program. Upon information and belief, throughout the period Claimant was in custody, Claimant was in emotional and physical distress. Claimant was in need of prescription medication and medical attention to treat an ongoing medical condition. Upon information and belief, the employees, agents, and/or servants of the COUNTY OF ERIE responsible for the care of Claimant at the Erie County Holding Center were aware, or should have been aware, of Claimant's medical condition. The employees, agents, and/or servants of the COUNTY OF ERIE responsible for the care of Claimant at the Erie County Holding Center owed a duty to provide adequate healthcare to Claimant while she was incarcerated at the Erie County Holding Center. Employees, agents and/or servants of the COUNTY OF ERIE failed to provide timely, sufficient, or appropriate medical care to Claimant.

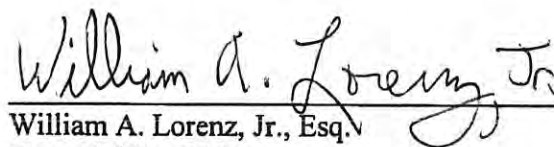
Upon information and belief, the foregoing was performed pursuant to policy and custom of Respondent, and took place within the presence of, under the supervision of, and was approved by supervisors and other officials of the City of Buffalo and Buffalo Police Department.

4. **The items of damages or injuries claimed are:**

Claimant suffered, including but not limited to, severe sepsis with acute respiratory failure and lactic acidosis, aspiration pneumonia, and stress cardiomyopathy, as well as physical injuries in the form of a broken rib, and mental and emotional injuries in the form of severe mental anguish, anxiety, and post traumatic stress, including pain and suffering, causing Claimant to incur and continue to incur medical expenses, as well as other damages. Said claim and demand is hereby presented for adjustment and payment.

PLEASE TAKE FURTHER NOTICE that by reason of the premises, in default of the COUNTY OF ERIE, to pay Claimant the sum to be determined within the time limited for compliance with this demand pursuant to statutes in such cases made and provided, the Claimant intends to commence action against the COUNTY OF ERIE to recover said damages with interest and the costs of this action.

Dated: January 22, 2018
Amherst, New York

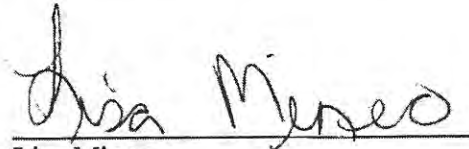


William A. Lorenz, Jr., Esq.
HoganWillig, PLLC
Attorneys for Claimant
2401 North Forest Road, Suite 301
Amherst, New York 14068
(716) 636-7600
wlorenz@hoganwillig.com

VERIFICATION

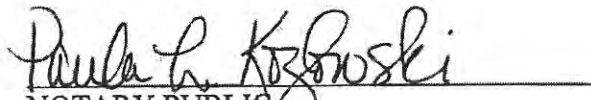
STATE OF NEW YORK)
)
COUNTY OF ERIE) SS:

Lisa Mineo, being duly sworn says: I am the Claimant in the action herein; I have read the annexed Notice of Claim and know the contents thereof and the same is true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.



Lisa Mineo

Sworn to before me this 22nd
day of January, 2018.



NOTARY PUBLIC

Paula L. Kozlowski
Notary Public State of New York
Qualified in Wyoming County
My Commission Expires December 21, 2021.

