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GA

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH.
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

MEMORANDUM

TO: Robert M. Graber, Clerk, Erie County Legislature
FROM: Michelle M. Parker, First Assistant County Attorney
DATE: May 1, 2012
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 fourteen (14) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Niagara Wind Power, LLC and Erie Wind Power v. County of Erie, et al.
Niagara Mohawk Action to Obtain Easements in Orchard Park, Boston
Mandy Kusior as PNG of McKayla Kusior v. County of Erie, et al.
Robin White v. County of Erie
Sophie Maciag v. County of Erie
Gloria Johnson-Schmitt, et al. v. Erie County Sheriff's Department, et al.
Bryan Ball v. County of Erie, et al.
Elizabeth Szewczyk, a Minor by Michele Peckey v. County of Erie, et al.
Derrick Anderson v. RN Serena, Sheriff Howard, et al.
Larry J. Collins v. County of Erie, et al.
Dora Nenni v. Nirav Shah and Carol Dankert
Jareld Bailey v. William Boller, et al.
Joanne Batch, as PNG of Brittany Fleming v. City of Buffalo, et al.
Alice Keim and George Kuntz on b/h of Estate of Angela Keim v. County of Erie, et al.

9D-6



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

April 10, 2012

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

Dear Mr. Graber:

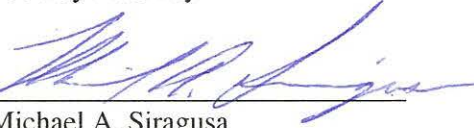
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Niagara Wind Power, LLC and Erie Wind, LLC v. County of Erie, Erie County Sewer District No. 6, et al.</i>
Document Received:	Verified Petition
Name of Claimant:	Niagara Wind Power, LLC
Claimant's attorney:	Stephen A. Sharkey Bond, Schoeneck & King, PLLC 40 Fountain Plaza, Suite 600 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michael A. Siragusa
Direct Dial: (716) 858-2201
Email: Michael.Siragusa@erie.gov

MAS/dld
Enclosure

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

In the Matter of the Application for a Declaratory Judgment,
Money Judgment, and for Review under Article 78 of the
Civil Practice Law and Rules, by

NIAGARA WIND POWER, LLC AND ERIE WIND, LLC,

Plaintiffs-Petitioners,

SUMMONS

-against-

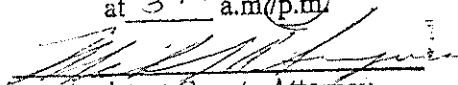
THE COUNTY OF ERIE, ERIE COUNTY SEWER
DISTRICT NO. 6, AND NORMAN POLANSKI, JAMES
A. CARR, P.E., AND ANTHONY COLLARENO, AS THE
BOARD OF MANAGERS OF ERIE COUNTY SEWER
DISTRICT NO. 6, THE ERIE COUNTY DEPARTMENT OF
ENVIRONMENT AND PLANNING, THE
COMMISSIONER OF THE ERIE COUNTY DEPARTMENT
OF ENVIRONMENT AND PLANNING, THE DEPUTY
COMMISSIONER OF THE ERIE COUNTY DEPARTMENT
OF ENVIRONMENT AND PLANNING AS HEAD OF THE
DIVISION OF SEWERAGE MANAGEMENT, THE
DIVISION OF SEWERAGE MANAGEMENT, AND "JOHN
DOES I-III," the real names of such individuals being
unknown to Plaintiffs-Petitioners and said fictitious names
being intended to designate certain individuals representing the
board members of the Board of Managers of Erie County
Sewer District No. 6 during 2011,

Index No.

RJI No.

Justice Presiding:

FILED
04/05/2012/ 10:52:26
ERIE COUNTY CLERK
RCPT # 12053785
1 2012001173

This paper received at the
Erie County Attorney's Office
from Ray Koutandouski on
the 9th day of April, 2012
at 3:45 a.m.(p.m.)

Assistant County Attorney

Defendants-Respondents.

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs-Petitioners'
("Petitioners") attorneys a Verified Answer to the Petition and Complaint in this action within
twenty (20) days of the service of this Summons, exclusive of the day of service, or within thirty
(30) days after the completion of service if service was made in any other manner other than by
personal delivery within the state of New York.

In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the attached Verified Petition and Complaint.

Erie County is designated as the venue of this action and proceeding on the basis that Defendants-Respondents are located within Erie County; the decisions and actions herein complained of were made within Erie County; and, the certain properties of the Petitioners that are at issue in this action and proceeding are all located within Erie County.

Dated: March 30, 2012

BOND, SCHOENECK & KING, PLLC

By: 

Stephen A. Sharkey, Esq.
Rebecca M. Speno, Esq.
Attorneys for Petitioners
40 Fountain Plaza, Suite 600
Buffalo, New York 14202
(716) 566-2800

TO:

THE ERIE COUNTY CLERK
Edward A. Rath County Office Building
95 Franklin Street
Buffalo, New York 14202

ERIE COUNTY SEWER DISTRICT NO. 6
95 Franklin Street
Buffalo, New York 14202

NORMAN POLANSKI
Chairman
ECSD No. 6 Board of Managers
95 Franklin Street, 10th Floor
Buffalo, New York 14202

JAMES A. CARR, P.E.
Secretary
ECSD No. 6 Board of Managers
95 Franklin Street, 10th Floor
Buffalo, New York 14202

ANTHONY COLLARENO
Member
ECSD No. 6 Board of Managers

95 Franklin Street, 10th Floor
Buffalo, New York 14202

THE ERIE COUNTY DEPARTMENT OF
ENVIRONMENT AND PLANNING
95 Franklin Street, 10th Floor
Buffalo, New York 14202

THE COMMISSIONER OF THE ERIE COUNTY
DEPARTMENT OF ENVIRONMENT AND
PLANNING
95 Franklin Street, 10th Floor
Buffalo, New York 14202

DEPUTY COMMISSIONER OF THE ERIE COUNTY
DEPARTMENT OF ENVIRONMENT AND
PLANNING, DIVISION OF SEWERAGE
MANAGEMENT
95 Franklin Street, 10th Floor
Buffalo, New York 14202

ERIE COUNTY ATTORNEY
Erie County Attorney's Office
95 Franklin Street, Rm. 1634
Buffalo, New York 14202

DIVISION OF SEWERAGE MANAGEMENT
95 Franklin Street, 10th Floor
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

In the Matter of the Application for a Declaratory Judgment,
Money Judgment, and for Review under Article 78 of the
Civil Practice Law and Rules, by

NIAGARA WIND POWER, LLC AND ERIE WIND, LLC,

Plaintiffs-Petitioners,

-against-

THE COUNTY OF ERIE, ERIE COUNTY SEWER
DISTRICT NO. 6, AND NORMAN POLANSKI, JAMES
A. CARR, P.E., AND ANTHONY COLLARENO, AS THE
BOARD OF MANAGERS OF ERIE COUNTY SEWER
DISTRICT NO. 6, THE ERIE COUNTY DEPARTMENT OF
ENVIRONMENT AND PLANNING, THE COMMISSIONER
OF THE ERIE COUNTY DEPARTMENT OF
ENVIRONMENT AND PLANNING, THE DEPUTY
COMMISSIONER OF THE ERIE COUNTY DEPARTMENT
OF ENVIRONMENT AND PLANNING, AS HEAD OF THE
DIVISION SEWERAGE MANAGEMENT, THE DIVISION
OF SEWERAGE MANAGEMENT, AND "JOHN DOES I-III"
the real names of such individuals being unknown to Plaintiffs-
Petitioners and said fictitious names being intended to designate
certain individuals representing the board members of the Board
of Managers of Erie County Sewer District No. 6 during 2011,

Defendants-Respondents.

NOTICE OF PETITION

Index No.

RJI No.

Justice Presiding:

FILED
04/05/2012/ 10:52:26
ERIE COUNTY CLERK
RCPT # 12053785
I 2012001173

PAID
CHECK CASH
APR 05 2012
ERIE COUNTY
CLERK'S OFFICE

PLEASE TAKE NOTICE that upon the attached Verified Petition and Complaint of
Plaintiffs-Petitioners Niagara Wind Power, LLC and Erie Wind, LLC ("Petitioners"), verified on
March 30, 2012, with the exhibits attached thereto, as well as the affidavits of Cindy Eidel,
Michael Andrzejczak, and Stephen A. Sharkey, Esq., an application will be made at a Special
Term of the Supreme Court, Erie County, to be held at the Erie County Court House at ⁵⁰~~25~~
Hon. Deborah A. Chimes, Per # 30 *9:30 a.m.*
Delaware Avenue, Buffalo, New York 14202, on May 17, 2012, at ~~10~~ o'clock in the forenoon on

Buffalo, New York 14202

ANTHONY COLLARENO

Member

ECSD No. 6 Board of Managers

95 Franklin Street, 10th Floor

Buffalo, New York 14202

THE ERIE COUNTY DEPARTMENT OF
ENVIRONMENT AND PLANNING

95 Franklin Street, 10th Floor

Buffalo, New York 14202

THE COMMISSIONER OF THE ERIE COUNTY
DEPARTMENT OF ENVIRONMENT AND
PLANNING

95 Franklin Street, 10th Floor

Buffalo, New York 14202

DEPUTY COMMISSIONER OF THE ERIE COUNTY
DEPARTMENT OF ENVIRONMENT AND
PLANNING, HEAD OF THE DIVISION OF
SEWERAGE MANAGEMENT

95 Franklin Street, 10th Floor

Buffalo, New York 14202

ERIE COUNTY ATTORNEY

Erie County Attorney's Office

95 Franklin Street, Rm. 1634

Buffalo, New York 14202

DIVISION OF SEWERAGE MANAGEMENT

95 Franklin Street, 10th Floor

Buffalo, New York 14202



MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
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April 10, 2012

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Erie County Legislature
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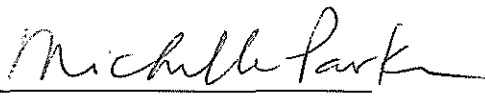
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File Name:	<i>Niagara Mohawk Action to Obtain Easements in Orchard Park, Boston and Concord</i>
Document Received:	Verified Petition
Name of Claimant:	Niagara Mohawk d/b/a National Grid
Claimant's attorney:	Mark R. McNamara, Esq. Hiscock & Barclay, LLP 1100 M & T Center 3 Fountain Plaza Buffalo, New York 14203

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209
Email: parkerm3@erie.gov

MMP/dld
Enclosure

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

FILED
03/15/2012/ 10:40:55
ERIE COUNTY CLERK
RCPT # 12041265
1 2012000909

**In the Matter of the Application of
NIAGARA MOHAWK POWER CORPORATION,
d/b/a NATIONAL GRID**, pursuant to Article 4 of the
Eminent Domain Procedure Law, to acquire title to
easement interests in real properties located in the Towns of
Orchard Park, Boston and Concord, Erie County for the
Gardenville-Homer Hill 115 kV Electric Transmission
Lines Project.

VERIFIED PETITION

Index No. I 909/2012

Hon. Patrick H. NeMayer

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Condemnor/Petitioner, NIAGARA MOHAWK POWER CORPORATION, d/b/a NATIONAL
GRID ("National Grid" or "Condemnor/Petitioner"), by and through its attorneys, Hiscock & Barclay,
LLP, for its Petition alleges as follows:

1. National Grid is a corporation organized and existing under the laws of the State of New
York with its principal office located at 300 Erie Boulevard West, in the City of Syracuse, Onondaga
County, New York 13202. Condemnor/Petitioner is a gas and electric corporation as defined in the
Transportation Corporations Law ("TCL").

2. National Grid is vested with the power of eminent domain pursuant to TCL §11(3-b).
Under Eminent Domain Procedure Law ("EDPL") §206, National Grid is exempt from compliance with
EDPL Article 2 pursuant to the April 24, 2009 order issued by the New York Public Service Commission
("PSC") entitled "Order Adopting the Terms of a Joint Proposal with Exceptions and Modifications and
Granting Certificate of Environmental Compatibility and Public Need", Case 06-T-1040 ("Certificate")
and the PSC's further July 22, 2009 "Order Granting Approval of Environmental Management and
Construction Plan" ("EM&CP Order"). The Certificate and EM&CP Order are collectively referred to as

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

FILED
03/15/2012/ 10:40:55
ERIE COUNTY CLERK
RCPT # 12041265
I 2012000909

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Construction Plan" ("EM&CP Order"). The Certificate and EM&CP Order are collectively referred to as

the "PSC Orders" and remain in force. Copies of the Certificate and the EM&CP Order are attached hereto as Exhibits 1 and 2, respectively.

3. Consistent with the PSC Orders, National Grid has reconstructed approximately 21 miles of existing 115 kilovolt (kV) double circuit transmission facilities from the Gardenville Substation through the towns of Orchard Park, Boston and Concord, Erie County, New York to Structure 199 in Concord to provide continued, long term operation and maintenance of this critical infrastructure, to repair and replace the 80-year-old transmission lines, structures and facilities that have reached the end of their service lives so as to improve reliability of electric service as approved by the PSC and to ensure safe and reliable operation of National Grid's electric facilities ("Project"). See Certificate, Exhibit 1, p. 3.

4. For this Project, National Grid must acquire those real property interests for either Danger Tree Easements or Vegetation Management Easements in certain real property as identified in Schedule A hereto ("Properties"). A copy of Schedule A is attached hereto as Exhibit 3. Copies of the legal descriptions of the respective property interests being acquired in the Properties and the maps depicting such property interests are together referred to as the respective "Acquisition Maps." The Acquisition Maps are attached as Exhibits 2 through 54 to the accompanying Notice of Petition. A copy of the corresponding Notice of Pendency which National Grid intends to file with the Erie County Clerk is attached hereto as Exhibit 4.

5. A Danger Tree Easement consists of the perpetual right, privilege and authority:
- a) From time to time, without further payment therefor, clear or keep cleared the property interests identified in the applicable Acquisition Maps of any and all trees, limbs, branches, roots, or vegetation that, in the opinion of National Grid, pose a risk to the safe and reliable operation of National Grid's electric facilities.

- b) After the first clearing, unless in case of emergency, National Grid shall notify the owners of the Properties of its need to exercise the Danger Tree Easement rights; and
- c) The right of access upon the property identified in the Acquisition Maps for the purposes stated.

Danger Tree Easements are required for the Properties listed in Schedule A (Exhibit 1) and identified as follows:

<u>SBL No.</u>	<u>Acquisition Map Exhibit (Notice of Petition)</u>
152.18-1-13.1	3
172.00-2-3.1	7
211.10-1-27; 211.10-1-28	22
227.00-6-40.11	40
242.09-3-3	44
258.00-2-18	45
258.00-2-20	46
258.00-2-31	47
258.00-3-1.121	48
258.10-2-23.2	49
291.00-1-28.111	53

6. Within the respective Properties, a Vegetation Management Easement consists of the perpetual right, privilege and authority:

- a) From time to time, without further payment therefor, clear and keep cleared the property interests identified in the applicable Acquisition Maps of any and all trees, limbs, branches, roots, vegetation, or other obstructions and to cut, trim, and remove other trees and vegetation within the Vegetation Management Easement area (the first clearing may be for less than the full width and may be widened from time to time to the full width), and to cut, trim, and/or remove any trees, limbs, branches, roots, or vegetation beyond the bounds of the Vegetation Management Easement area that, in the opinion of National Grid, pose a risk to the safe and reliable operation of National Grid's electric facilities; and
- b) The right of access upon the property identified in the applicable Acquisition Map for the purposes stated.

Vegetation Management Easements are required for the Properties listed in Schedule A (Exhibit 1) and identified as follows:

<u>SBL No.</u>	<u>Acquisition Map Exhibit (Notice of Petition)</u>
152.13-3-23.11	2
161.06-1-1	4
161.06-1-2	5
161.18-1-30	6
172.00-2-8.111	8
172.00-2-8.121	9
172.01-1-19	10
184.09-2-30	11
184.09-2-32	12
184.09-2-34	13
184.09-2-36	14
184.09-2-37	15
184.09-2-42	16
184.09-2-43.1	17
184.09-2-48	18
184.09-2-49.1	19
211.04-2-7	20
211.04-2-8	21
211.14-2-1	23
226.02-6-5	24
226.02-9-2	25
226.02-9-21	26
226.02-9-25	27
226.02-9-27	28
226.02-9-28	29
226.02-9-4	30
226.02-9-5	31
227.00-5-29	32
227.00-6-16.111	33
227.00-6-17.12	34
227.00-6-18.111	35
227.00-6-19	36
227.00-6-20.1	37
227.00-6-23.12	38
227.00-6-25.2	39
242.05-2-11	41
242.05-2-12	42

<u>SBL No.</u>	<u>Acquisition Map Exhibit (Notice of Petition)</u>
242.05-2-9	43
274.00-1-17	50
274.00-1-18	51
291.00-1-13	52
291.00-1-8	54

7. As determined by the PSC, the Project serves the public use, benefit or purpose by bringing necessary improvements to National Grid's transmission line necessary in order to provide continued long-term operation and maintenance of National Grid's critical infrastructure electric delivery system in National Grid's Western Region ("Region"). *See* Certificate, Exhibit 1, p. 6. The Project provides a reliable means of continuously supplying electric energy to the Region, thereby minimizing outages and addressing the serious public safety, health and lost business concerns created by outages. The original structures were constructed approximately 80 years ago and have served their useful lives. Several of the towers along this line have failed over the past few years during storms and were replaced on an as-needed emergency basis. The conductor and shield wires have also been replaced due to their approaching the end of their service lives. *See* Certificate, Exhibit 1, p. 6. Structure failures on active lines would clearly degrade system reliability. The replacement of the deteriorated transmission lines, steel structures and other structure components decreases the risk of in-service failures of components approaching the end of their useful lives. In addition, National Grid is required to proceed with the Project simply as part of the ongoing maintenance of its electric delivery system.

8. The name and place of the reputed owners of the Properties are set forth in the attached Schedule A. *See* Exhibit 3.

9. John Doe and Mary Roe, the said names being fictitious and intended to describe any and all persons who possess or may possess an ownership interest, if any, in that portion of the Properties in which National Grid seeks a Danger Tree Easement or Vegetation Management Easement, all such persons, if any, being unknown to National Grid, are named condemnees herein in order to extinguish any such ownership interests to the degree necessary to acquire these easement interests.

10. In accordance with EDPL 402(B)(3)(f) and, unless the requirement to post security is waived by the Court, National Grid shall deposit a bond or undertaking with the Clerk of the Court prior to vesting of title to the Properties in an amount to be fixed by the Court on the return of the Petition.

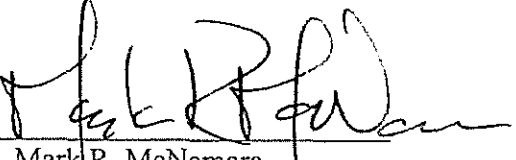
11. National Grid has not previously applied to this or any other Court for the relief requested herein.

WHEREFORE, Condemnor/Petitioner National Grid requests that this Court direct entry of an Order pursuant to EDPL 402(B)(5) authorizing it to file a copy of the Acquisition Maps attached as Exhibits 2 through 54 to the Notice of Petition (as well as to the Notice of Pendency) in the Office of the Erie County Clerk and, if necessary and prior to such filing, to deposit a bond or undertaking with the Clerk of the Court in an amount to be fixed by the Court on the return of the Petition and that upon such deposit and filing, title to the Danger Tree Easement and Vegetation Management Easement interests in the Properties as identified in the respective Acquisition Maps shall vest in National Grid.

DATED: March 1, 2012

HISCOCK & BARCLAY LLP

By:


Mark R. McNamara
Emanuela D'Ambrogio
Stephanie O. Lamarque

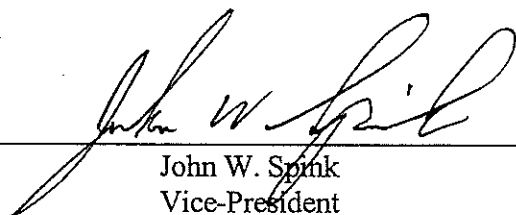
Attorneys for Condemnor/Petitioner,
Niagara Mohawk Power Corporation,
d/b/a National Grid
1100 M&T Center
Three Fountain Plaza
Buffalo, New York 14203
Telephone: (716) 566-1300

HISCOCK & BARCLAY, LLP

VERIFICATION

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

John W. Spink, being duly sworn, deposes and says that he is the Vice-President, of Niagara Mohawk Power Corporation, d/b/a National Grid, Condemnor/Petitioner herein, that deponent has read the foregoing Petition and knows the contents thereof, that the same is true to deponent's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes them to be true.



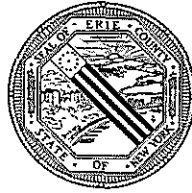
John W. Spink
Vice-President

Subscribed and sworn to before me
this 14 day of March, 2012.



Notary Public

KAREN J. KIRKMAN
Notary Public State of New York
Qualified in Onondaga County
No. 01K16177389
Comm. Exp. Nov. 13, 2015



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

April 11, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
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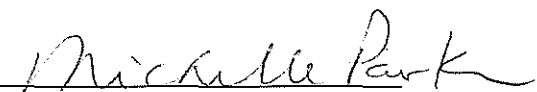
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kusior, Mandy as PNG of Kusior, McKayla v. County of Erie and Child Protective Services of Erie County</i>
Document Received:	Notice of Motion with Motion
Name of Claimant:	Mandy Kusior, as PNG of McKayla Kusior 193 Hancock Avenue Buffalo, New York 14220
Claimant's attorney:	Nadeen C. Singh Law Offices of James Morris 1015 Liberty Building 424 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP/dld
Enc.

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
MANDY KUSIOR, Individually, and as Parent and
Natural Guardian of MCKAYLA KUSIOR,
193 Hancock Avenue,
Buffalo, NY 14220,

Claimant,

vs.

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

CHILD PROTECTIVE SERVICES OF ERIE
COUNTY
95 Franklin Street
Buffalo, New York 14202

Respondents

**NOTICE OF MOTION TO
SERVE LATE NOTICE OF
CLAIM**

Index No.

MOTION MADE BY : LAW OFFICES OF JAMES MORRIS
Attorneys for Claimant
1015 Liberty Building
424 Main Street
Buffalo, New York 14202

DATE, TIME AND PLACE OF HEARING : To be determined.

SUPPORTING PAPERS : Affirmation of Nadeen Singh Esq., Affidavit of
Mandy Kusior, and the proposed Notice of Claim.

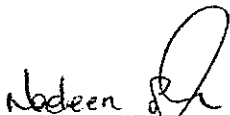
RELIEF SOUGHT AND GROUNDS THEREFORE : Order pursuant to §§50-e and 50-I of the General
Municipal Law of the State of New York granting
Claimant leave to serve late Notice of Claim, and
for such other and further relief as the Court may
deem just and proper.

TYPE OF ACTION : Personal Injury

ORAL ARGUMENT : Requested.

PLEASE TAKE FURTHER NOTICE that answering affidavits, if any, must be served on the undersigned attorneys at least seven (7) days before the return date of this Motion, pursuant to CPLR § 2214(b).

DATED: Buffalo, New York
April 2, 2012

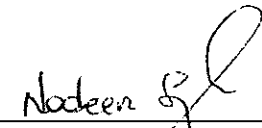


Nadeen Singh Esq.
LAW OFFICES OF JAMES MORRIS
Attorneys for Claimant
1015 Liberty Building
424 Main Street
Buffalo, New York 14202
Tel: (716) 855-1118

TO: Michael A. Siragusa, Esq.
Erie County Attorney's Office
95 Franklin Street, Rm 1634
Buffalo, New York 14202

AFFIRMATION OF SERVICE

Nadeen Singh Esq., affirms under penalty of perjury that he served the within Notice of Motion by mailing a copy of same to counsel for all parties at the above shown address(es) on the 4th day of April, 2012.



Nadeen Singh, Esq.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
MANDY KUSIOR, Individually, and as Parent and
Natural Guardian of MCKAYLA KUSIOR,

Claimant,

vs.

COUNTY OF ERIE

CHILD PROTECTIVE SERVICES OF ERIE
COUNTY

Respondents

AFFIRMATION

Index No.

NADEEN C. SINGH ESQ., affirms the following under penalties of perjury:

1. That I am an attorney at law duly licensed to practice law in the State of New York, and an attorney for the claimant in the above entitled action, and as such am fully familiar with the facts and circumstances contained herein.
2. That I make this affirmation in support of Claimant's Motion for leave to serve a Late Notice of Claim, as set forth in **Exhibit "B,"** upon the Child Protective Services of Erie County pursuant to the requirements of General Municipal Law §50-e(5).
3. That incorporated herein by reference are the particulars of the claim as stated in the proposed Notice of Claim.
4. That based upon the information available at this time, it appears that the Claimants have a meritorious claim against the Child Protective Services of Erie County based upon its negligent control of the Infant Claimant.
5. Upon information and belief, assuming the Infant Claimant was within the exclusive possession and control of the Child Protective Services of Erie County, the doctrine of res

ipsa loquitur will apply in this matter. In the James case, the Fourth Department explained the elements of a res ipsa loquitur claim. See, James v. Wormuth, 2012 NY Slip Op. 02196. [“(1) the event must be of a kind that ordinarily does not occur in the absence of someone’s negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; and (3) it must not have been due to any voluntary action or contribution on the part of plaintiff.”]

6. Upon information and belief, the Infant Claimant was taken into the exclusive control and possession of the Child Protective Services of Erie County on or about April 8, 2011. At the time when she fractured her skull, she was within the sole possession and control of the Child Protective Services of Erie County. An Infant child, less than 2 weeks old, suffering a fractured skull does not ordinarily occur in the absence of negligence, nor could it have been due to the voluntary action or contribution on the part of the infant.

7. Claimant acknowledges that her claim is approximately 9 months past the statutory 90 day period but maintains that she should be allowed to still serve the Notice of Claim based on the merits of her claim and the following arguments. Claimant is within the statutory period to make this application to serve a late notice of claim.

RESPONDENTS HAD ACTUAL KNOWLEDGE OF THE ESSENTIAL FACTS

8. An employee or agent of the Child Protective Services of Erie County had knowledge of the essential facts of Claimant’s claim the same day that it happened. Upon information and belief, an employee of respondent informed Claimant that the infant claimant had suffered an injury. Infant Claimant was taken to the Women and Children’s Hospital of Buffalo for treatment of the fractured skull by an employee of respondent.

9. Respondent should be in possession of an incident report as to the fact surrounding Infant Claimant’s injuries.

10. Thus, respondent had knowledge of the essential facts of Claimant's claim well within ninety (90) days of its occurrence and thus, will not be prejudiced if the Claimant is permitted to file a Late Notice of Claim.

REASON FOR DELAY

11. Infant Claimant remained within the sole custody and control of respondent until March 15, 2012 when she was returned to the Claimant's custody. During the period that Infant Claimant was in the custody of respondent, Claimant had no information as to the facts surrounding Infant Claimant's injuries, and did not want to jeopardize her chances of having custody of Infant Claimant returned to her.

12. Since receiving Infant Claimant back into her custody, Claimant has observed certain changes and other medical conditions of Infant Claimant that has caused her to be concerned.

13. Claimant has been unable to obtain Infant Claimant's medical records to determine whether she suffered any other injuries while in the custody and control of the Child Protective Services of Erie County.

14. Claimant retained an attorney to pursue a claim on behalf of herself and Infant Claimant, as soon as she could.

RESPONDENT BEAR THE BURDEN TO DEMONSTRATE SUBSTANTIAL PREJUDICE

15. Respondent has the initial burden to demonstrate that they will suffer prejudice in their defense of the Claimant's claim against them. Frazzetta v. Roundout Valley Cert.S.D., 563 NYS 2d 533 (3rd Dept, 1990); Ortega, 561 NYS 2d 304 (2nd Dept, 1990). Mere unsupported allegations of prejudice are not enough to defeat a claimant's motion to file a late notice of claim, nor will the mere passage of time give rise to an automatic presumption of prejudice. Jenkins, 462 NYS 2d 766 (Court of Claims, 1983). Most importantly, prejudice must be substantial.

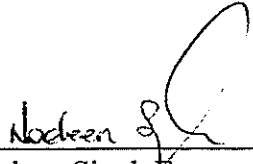
See Wetzel Services, 616 NYS 2d 832 (4th Dept, 1994) [motion to serve late notice of claim granted when Defendant made no particularized or persuasive showing that the delay caused them substantial prejudice].

16. The above mentioned knowledge that Respondent has of the facts of Claimant's claim, combined with the availability of witnesses to the circumstances surrounding Infant Claimant's injuries, based on its records, constitute sufficient information for Respondent to defend themselves against Claimant's claim. Claimant has testified to the names of Cheryl Williams, a foster parent with whom Infant Claimant stayed, as well as a Shannon, CPS employee who took Infant Claimant from the custody of Claimant.

17. Based on the above, Respondent will not be prejudiced if Claimant is permitted to file a late Notice of Claim, as requested herein. See In the Matter of Anna Darmstedter, Appellant v. Buffalo Sewer Authority, 467 NYS 2d 460 (4th Dept, 1983) [Just claim for serious injury should not be forfeited for failure to give notice where basic purpose of statute is not offended and where no substantial prejudice exists.]

WHEREFORE, your deponent respectfully requests that this Court grant leave to the Claimant to file a late Notice of Claim as set forth in **Exhibit "B,"** and for such other and further relief which to the Court may seem just and proper.

DATED: Buffalo, New York
April 2, 2012



Nadeen Singh Esq.
LAW OFFICES OF JAMES MORRIS
Attorneys for Claimant
424 Main Street, Suite 1015
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
MANDY KUSIOR, Individually, and as Parent and
Natural Guardian of MCKAYLA KUSIOR,

Claimant,

vs.

COUNTY OF ERIE
CHILD PROTECTIVE SERVICES OF ERIE
COUNTY

Respondents

AFFIDAVIT

Index No.

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

MANDY KUSIOR, being duly sworn, deposes and says:

1. That I am the mother of McKayla Kusior whose date of birth is March 28, 2011.

2. I make this affidavit in support of a motion to serve a late notice of claim against the County of Erie and the Child Protective Services of Erie County.

3. On or around April 8, 2011, McKayla was taken into the custody of the Child Protective Services of Erie County.

4. On or around April 12, 2011, I was informed by an employee of the Child Protective Services of Erie County that McKayla had suffered an injury. I went to Women and Children's Hospital of Buffalo and saw McKayla with bandages around her head. I was told by a doctor that she had suffered a fractured skull.

5. I had not seen McKayla between April 8, 2011 when she was taken from me until April 12, 2011 when I saw her at the hospital. As far as I am aware, during that period she had been in the sole custody and control of the Child Protective Services of Erie County.

6. To date I have been unable to determine how McKayla came to suffer the fractured skull.

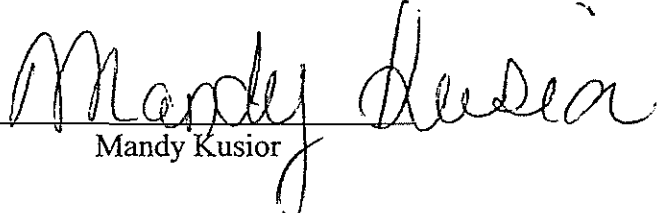
7. On March 15, 2012, by an Order of Judge Paul Buchanan, me and my husband had custody of McKayla returned to us. See a copy of Judge Paul Buchana's order attached as **Exhibit 'A.'**

8. Since receiving McKayla back into my custody, I have had cause for concern as to her medical condition. She is currently scheduled for surgery on April 13, 2012 for a hematoma on her forehead. This hematoma had not been present when Child Protective Services of Erie County took custody of her. I intend to have her medically examined to determine whether there are any other conditions requiring medical treatment, and which developed while she was in the custody of the Child Protective Services of Erie County.

9. As soon as I received custody of McKayla, I tried contacting an attorney to pursue a claim against the County of Erie and the Child Protective Services of Erie County. I was afraid to pursue a claim before I had received custody of McKayla in the event it affected whether she would ever be returned to my custody.

10. McKayla has sustained serious and permanent injuries as a result of the negligent supervision by the Child Protective Services of Erie County.

11. I would like to be compensated, on behalf of McKayla, for her injuries sustained while under the supervision, custody and control of the Child Protective Services of Erie County.


Mandy Kusior

Sworn to before me this
2nd day of April, 2012


Notary Public

NADEEN SINGH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires: 7/20/2013

General Form 15
(Order on Review)
09/1981

At a term of the Family Court of the
State of New York, held in and for the
County of Erie, at Courthouse, One
Niagara Plaza, Buffalo, NY 14202, on
February 29, 2012

PRESENT: Hon. Paul G. Buchanan

In the Matter of

File #: 197952
Docket #: NN-05040-11
NN-12342-11

Layla Naji (DOB: 3/14/2007),

Children under Eighteen Years of Age
-Alleged to be Neglected by

ORDER ON REVIEW

**Mandy Kusior,
Mohammed Naji,**

Respondents.

The Matter having been brought before this Court and the following having appeared: Erie County-DSS, Deborah Randazzo, Caseworker; Ayoka April Tucker, Attorney; Joseph William Stadler, Attorney; Mandy Kusior, Respondent; Mohammed Naji, Respondent; Erie County Department of Social Services-Office of Counsel, Daniel Slade, Attorney; Legal Aid Bureau of Buffalo, Attorneys for Children Unit, Marc Connors, Attorney; and

With consent of all parties and upon the recommendation of the Court Attorney Referee, Donna M. Castiglione; it is hereby


ORDERED that the above named child is returned to the custody of the Respondent Mother, Mandy Kusior and the Respondent Father, Mohammed Naji, upon the following terms and conditions: the Erie County Department of Social Services shall continue with the supervision of the Respondents and the child through August 29, 2012; both Respondents shall cooperate with the Erie County Department of Social Services, Baker Victory Services, and Community Services; the Respondent Mother shall continue with mental health treatment at Spectrum until successfully discharged; both Respondents shall maintain adequate income and housing; both Respondents shall maintain health and dental insurance coverage for the child and ensure all medical appointments are kept; and both Respondents shall register Layla for school in September.

ENTERED

ENTER

March 15, 2012

Frank J. Boccio
Clerk of Family Court
By: Rachel Marton, Clerk


Hon. Paul G. Buchanan

CC: Erie County Department of Social Services, Petitioner
Ayoka April Tucker, Esq.
Joseph William Stadler, Esq.
Mandy Kusior, Respondent
Mohammed Naji, Respondent
Erie County Department of Social Services-Office of Counsel, Esq., DSS
Legal Aid Bureau of Buffalo, Attorneys for Children Unit, Esq., Attorney for Child

MAR 22 2012

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
MANDY KUSIOR, Individually, and as Parent and
Natural Guardian of MCKAYLA KUSIOR,
193 Hancock Avenue,
Buffalo, NY 14220.

Claimant

v.

PROPOSED
NOTICE OF CLAIM

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

CHILD PROTECTIVE SERVICES OF ERIE COUNTY
95 Franklin Street
Buffalo, New York 14202

Respondents

PLEASE TAKE NOTICE that MANDY KUSIOR, Individually, and as Parent and
Natural Guardian of MCKAYLA KUSIOR, hereby makes a claim against the Child Protective
Services of Erie County and in support thereof the Claimant states:

1. The Claimant is MANDY KUSIOR, Individually, and as Parent and Natural Guardian
of MCKAYLA KUSIOR. The Claimant's address is 193 Hancock Avenue, Buffalo, NY 14220.
2. The name and address of the attorney for the Claimant is James E. Morris, Esq., 1015
Liberty Building, 42 Main Street, Buffalo, New York 14202.
3. Upon information and belief, the Child Protective Services of Erie County is
responsible for the safety and prevention of abuse or neglect to children, through the provision of
supportive services.
4. The accident which is the subject matter of this claim occurred on or around April

12, 2011.

5. The exact place where the claim arose and the injuries and damages sustained is at this time unknown to claimant.

6. The injuries and damages for which claim hereby is made arose in the following manner: the Infant Claimant was in the custody and control of the agents, employees and/or officers of the Child Protective Services of Erie County when, through their negligence, she suffered injuries, including a fractured skull.

7. That, upon information and belief, the Child Protective Services of Erie County was the sole custodian of the infant claimant at the time of her injuries, and were responsible for her safety and well being. The negligence of the employees, officers and/or employees of the Child Protective Services of Erie County caused Infant Claimant to sustain severe, serious and permanent injuries.

8. That the injury sustained by the Infant Claimant known at the present time is that she suffered a fractured skull.

9. The claim against the Child Protective Services of Erie County is for damages sustained by the Infant Claimant resulting from serious, severe and permanent personal injuries and mental and emotional anguish and medical expenses by reason of acts and/or omissions of the Child Protective Services of Erie County , its agents, servants, employees, and/or representatives, in the matter set forth herein.

PLEASE TAKE FURTHER NOTICE, that the Claimant respectfully request that this claim be allowed and paid by the Child Protective Services of Erie County ; and hereby notifies the the Child Protective Services of Erie County that unless the claim set forth herein is adjusted and paid within thirty (30) days from the presentation of this claim, it is the Claimant's intention to commence

an action against the Child Protective Services of Erie County to recover for the personal injuries and damages sustained by the Claimant, together with the costs and disbursements of such action.

Dated: Buffalo, New York
April 2, 2012

Mandy Kusior

TO: Michael A. Siragusa, Esq.
Erie County Attorney's Office
95 Franklin Street, Rm 1634
Buffalo, New York 14202



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

April 18, 2012

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 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>White, Robin vs. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Robin White 1826 Kenmore Avenue, Apt. B Buffalo, New York 14216
Claimant's attorney:	Gary A. Joseph, Esq. Sarles, Frey & Joseph 5800 Main Street Williamsville, NY 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP/dld

Enc.

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK : THE COUNTY OF ERIE
SUPREME COURT

ROBIN WHITE
1826 Kenmore Avenue, Apartment B
Buffalo, New York 14216

Plaintiff

vs.

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

Defendants

SUMMONS

Served with Complaint

INDEX NO. 2012-0452

FILED
02/24/2012/ 09:54:44
ERIE COUNTY CLERK
RCPT # 12029511
I 2012000652

TO THE ABOVE NAMED DEFENDANT(S):

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.

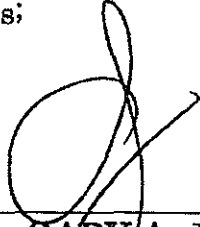
If you do not respond to the attached Complaint within the applicable time limitation stated above a Judgment will be entered against you, by default, for the relief demanded in the Complaint, without further notice to you.

This action is brought in the The County of Erie because of:

- ☒ Plaintiff's residence, or place of business;
- ☐ Defendant's residence;
- ☐ Designation made by Plaintiff.

DATED: February 24 2012

This paper received at the
Eric County Attorney's Office
from San Richard Czorn on
the 17th day of April, 2012
at 930 a.m./p.m.
MARTIN POLAWY
Assistant County Attorney


GARY A. JOSEPH
SARLES FREY & JOSEPH
Attorney for Plaintiff
Office, Post Office Address and Telephone
5800 Main Street
Williamsville, New York 14221
(716) 626-5200

STATE OF NEW YORK
SUPREME COURT : THE COUNTY OF ERIE

ROBIN WHITE

Plaintiff

COMPLAINT

vs.

INDEX NO. 20120652

THE COUNTY OF ERIE

Defendants

Plaintiff alleges upon information and belief as follows:

FIRST: That on February 25, 2011 at approximately 2:00 P.M., the Plaintiff, Robin White, entered an elevator located on the first floor of the Edward A. Rath County Office Building, 95 Franklin Street, Buffalo, New York 14202, with the intention of traveling from the first floor up to the third floor where she was going to apply for food stamps through the The County of Erie Department of Social Services.

SECOND: The elevator the Plaintiff entered was the southern most of three elevators located on the first floor of the Edward A. Rath County Office Building, south of a ceiling sign entitled "The County of Erie Works Center" and west of the building entrance entitled "The County of Erie Department of Social Services, 158 Pearl Street". The specific elevator the Plaintiff entered is depicted with an "X" on each of the photographs attached hereto as Exhibit "A" and made a part hereof.

THIRD: After entering the subject elevator, the Plaintiff rode the elevator up to the third floor as intended. Once the elevator reached the third floor,

the elevator doors opened. At that time, the elevator floor was positioned approximately 3-4 inches below the floor level of the third floor of said building.

FOURTH: As the Plaintiff exited the elevator in an easterly direction, her left foot caught on the rise between the floor level and the elevator floor causing the Plaintiff to trip and fall forward out of the elevator and onto the third floor.

FIFTH: As a result of said fall, Robin White suffered multiple serious injuries including, but not limited to injuries to her right knee, left knee, low back, neck, right shoulder and left shoulder all of which have left her with permanent injuries, the extent of which are still to be determined

SIXTH: At the time of this incident, the Defendant, The County of Erie, was the owner and operator of the Edward A. Rath County Office Building and as such, was responsible for operating, maintaining, inspecting, and repairing said building including, but not limited to the subject elevator.

SEVENTH: The incident described above was caused by and through the negligence of the Defendant, The County of Erie, its agents, servants and/or employees in that the Defendant, The County of Erie, did not take all adequate and necessary steps to provide for the safety of the Plaintiff. That specifically, the Defendant, The County of Erie, its agents, servants and/or employees negligently operated, inspected, repaired and/or maintained the elevator the Plaintiff was exiting at the time of this incident; negligently allowed said elevator to function in a way that was not fit for the purpose it was intended for; negligently allowed a dangerous condition to exist with regard to said elevator knowing that individuals

such as the Plaintiff would be exiting the elevator; failed to use all reasonable care to protect individuals known to use said elevator; failed to properly care for, maintain, repair, and inspect said elevator described above so as to make the same safe for travel; failed to properly inspect said elevator; failed to properly maintain said elevator; failed to properly repair said elevator; encouraged individuals such as the Plaintiff to use said elevator knowing that a dangerous condition existed thereon; failed to take any and all steps necessary to rectify the dangerous and unsafe condition which existed with regard to the elevator and which caused the Plaintiff to fall, which condition had existed for a considerable length of time prior to the date of this incident and/or which had been made known to the Defendant, The County of Erie, its agents, servants and/or employees; failed to warn the Plaintiff of the dangerous and hazardous condition that existed with regard to the said elevator; and otherwise failed to act in a manner so as to safeguard the Plaintiff.

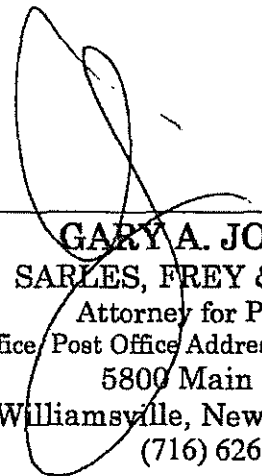
EIGHTH: That the Plaintiff has treated with and continues to treat with her doctors, has incurred and continues to incur various medical bills and has been and continues to be unable to work as a result of this incident.

NINTH: That the Plaintiff, Robin White, hereby makes claim for general and special damages against the Defendant, The County of Erie, for her personal injuries, permanency, pain and suffering, medical expenses and lost wages that have been incurred in the past and that will be incurred in the future in an amount that exceeds the jurisdictional limits of any inferior court.

TENTH: That this incident is exempt from the provisions of Section 1601 of the Civil Practice Law and Rules pursuant to the provisions of Section 1602 of the Civil Practice Law and Rules.

ELEVENTH: That a Notice of Claim was duly served upon the Defendant as required by the New York State Law within 90 days of this incident and more than 30 have passed since that service and that this claim has not yet been adjusted.

WHEREFORE, the Plaintiff, Robin White, demands judgment against the Defendant named herein in a sum that exceeds the jurisdiction of any inferior court plus the costs and disbursements of this action.



GARY A. JOSEPH
SARLES, FREY & JOSEPH
Attorney for Plaintiff
Office/ Post Office Address and Telephone
5800 Main Street
Williamsville, New York 14221
(716) 626-5200

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

I, ROBIN WHITE, being duly sworn, depose and say:

1. That I am the Plaintiff above named.
2. That I have read the foregoing Summons and Complaint against The County of Erie and know its contents.
3. That the same is true to my own knowledge except as to those matters herein stated to be upon information and belief, and then as to those matters I believe it to be true.



ROBIN WHITE

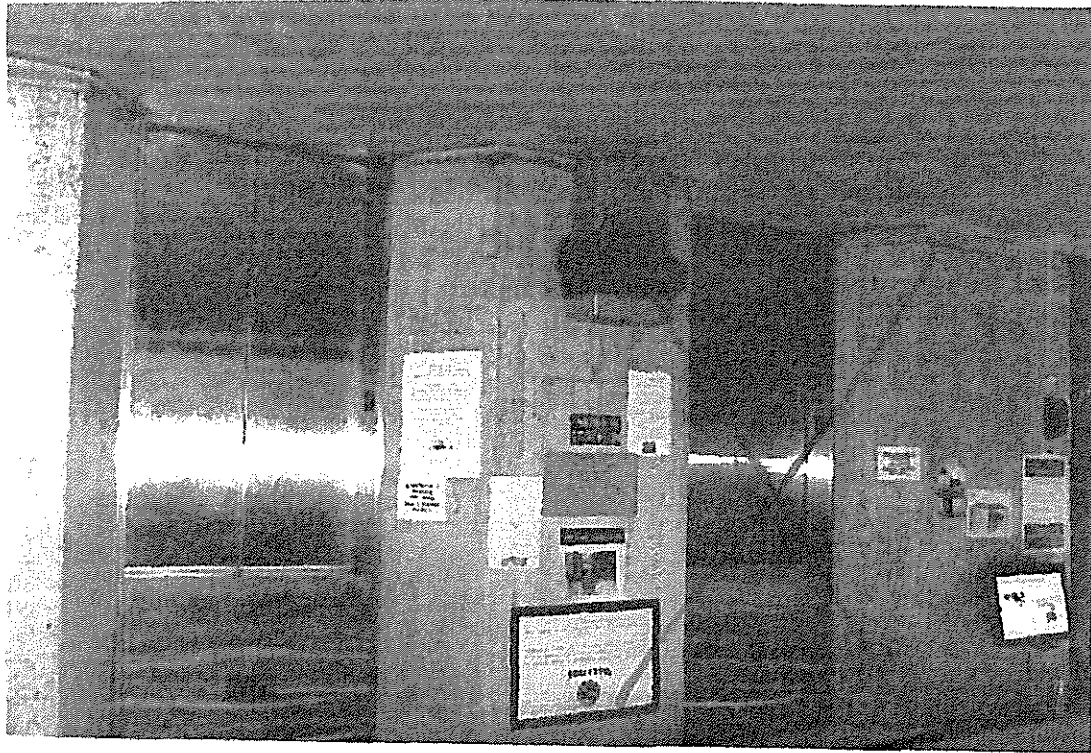
Sworn to before me this
24th day of February, 2012



NOTARY PUBLIC

LORI MINARO
Notary Public in the State of New York
Qualified in Erie County
My Commission Expires 10-12-14

EXHIBIT A



34



35



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

April 18, 2012

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 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>Maciag, Sophie v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Sophie A. Maciag 1320 Southwestern Boulevard West Seneca, New York 14224
Claimant's attorney:	David P. Feldman, Esq. 69 Delaware Avenue, Suite 711 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker

MMP/dld
Enc.

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK : COUNTY OF ERIE

In The Matter of SOPHIE A. MACIAG,

Claimant,

NOTICE OF CLAIM

-against-

COUNTY OF ERIE, NEW YORK

TO THE COUNTY OF ERIE, STATE OF NEW YORK:

PLEASE TAKE NOTICE, SOPHIE A. MACIAG claimant herein hereby make claim and demand against the County of Erie as follows:

1. Name and post office address of the claimant is Sophie A. Maciag, 1320 Southwestern Boulevard, West Seneca New York 14224;
2. Attorney for Claimant is David P. Feldman, Esq., 69 Delaware Ave., Suite 600, Buffalo, New York;
3. The claim of Sophia A. Maciag is for personal injury sustained by said claimant by the negligence of the County of Erie as herein after said forth;
4. Time when said claim arose and the time injuries herein after alleged were sustained was January 24, 2012 at approximately 1:00 p.m. Particular place of the occurrence of said injury resulting in the claim hereby made was in the parking lot of 1320 Southwestern Boulevard, West Seneca New York;
5. At the time and place of aforesaid claimant was a recipient of services by the Department Senior Services of the County of Erie. On that occasion, the said Department of Senior Services had undertaken to provide transportation for the

elderly including this claimant. Claimant was in the process of boarding a bus operated by agents of said Department of Erie County when she slipped upon the boarding step of said bus causing her to fall and strike said step sustaining serious injuries;

6. Said injuries so sustained by the claimant were caused as a result negligence of the Defendant, Senior Services Department, its agents servants and employees in maintaining the steps on the entrance to its' bus in a slippery and dangerous condition as a result of which Claimant suffered injury.
7. By reason of the negligence of the agency of said County as aforesaid Claimant suffered serious and disfiguring wounds of her leg necessitating surgical intervention including plastic surgery to rectify scarring on said leg.

WHEREFORE, Claimant requests that said County of Erie honor and pay the Claim of SOPHIE A. MACIAG.

A handwritten signature in cursive script, reading "Sophie Maciag", written over a horizontal line.

DATED: Buffalo, New York

~~March 5~~, 2012

APRIL

A large, stylized handwritten signature in cursive script, reading "David P. Feldman", written over a horizontal line.

DAVID P. FELDMAN

Attorney for Claimant

69 Delaware Avenue, Suite 600

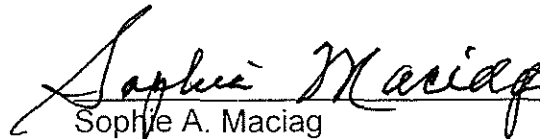
Buffalo, New York 14202

Tel: (716) 845-5300

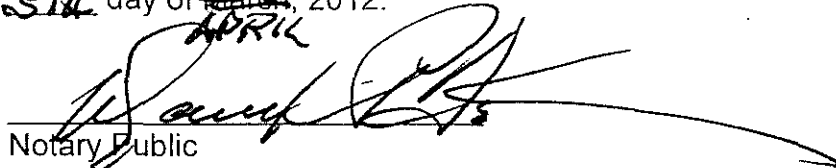
Fax: (716) 852-6784

VERIFICATION

SOPHIE A. MACIAG, being duly sworn, deposes and says: that deponent is the Plaintiff, in the within action; that deponent has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to 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.


Sophie A. Maciag

Sworn to before me this
~~5th~~ day of ~~March~~, 2012.


Notary Public

DAVID P. FELDMAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 9/8/13



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

April 18, 2012

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 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-Schmitt, Gloria, Youngs, Cara & Youngs, Cameron v. Erie County Sheriff's Department, et al.</i>
Document Received:	Summons and Complaint
Name of Claimant:	Gloria Johnson-Schmitt Cara Youngs and Cameron Youngs
Claimant's attorney:	David J. Seeger, P.C. 69 Delaware Avenue, Suite 1100 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle Parker

MMP/dld

Enc.

cc: Michael A. Siragusa, Erie County Attorney

UNITED STATES DISTRICT COURT

for the
WESTERN DISTRICT OF NEW YORK

GLORIA JOHNSON-SCHMITT, CARA YOUNGS
and CAMERON YOUNGS

Plaintiff

Civil Action No.

CAROLYN A. ROBINSON, ^vIndiv. and as Dog Control
Officer of Town of Concord; ERIE COUNTY
SHERIFF'S DEPARTMENT; COUNTY OF ERIE, NEW YORK;
JOHN DOE NO. 1; JOHN DOE NO. 2; THE SOCIETY FOR
THE PREVENTION OF CRUELTY TO ANIMALS, serving
Erie County; LINDSEY M.
STYBORSKI, Indiv. and as Peace Officer of
SPCA
10: (Defendant's name and address)

SUMMONS IN A CIVIL ACTION

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

A lawsuit has been filed against you.

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

David J. Seeger, Esq.
69 Delaware Avenue, Suite 1100
Buffalo, New York 14202
716-856-1536

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

CLERK OF COURT

MICHAEL J. ROEMER

Date: MAR 30 2012

Signature of Clerk or Deputy Clerk

12 CV 0260

RECEIVED
ERIE COUNTY
SHERIFF'S DEPT
2012 APR -3 AM 11:30

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GLORIA JOHNSON-SCHMITT,
CARA YOUNGS and CAMERON YOUNGS,

Plaintiffs,

-against-

COMPLAINT

12 CV 0260-S

Civil Action No.

CAROLYN A. ROBINSON, Individually
and as Dog Control Officer of the Town of
Concord;
ERIE COUNTY SHERIFF'S DEPARTMENT;
COUNTY OF ERIE, NEW YORK;
JOHN DOE NO. 1, being a certain Deputy
Erie County Sheriff whose name is
Presently unknown to Plaintiff;
JOHN DOE NO. 2, being a certain Deputy
Erie County Sheriff whose name is
Presently unknown to Plaintiff;
THE SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS, serving Erie County;
LINDSEY M. STYBORSKI, Individually
and as a Peace Officer and as Special Agent
in the Law Enforcement Division of the
Society For Prevention of Cruelty to Animals
Serving Erie County,

ORIGINAL
RECEIVED AND FILED
UNITED STATES DISTRICT COURT CLERK
WESTERN DISTRICT OF NEW YORK

MAR 30 2012

BY:

Defendants.

Plaintiff, by her attorney, DAVID J. SEEGER, ESQ., states as and for her
Complaint:

1. This is an action brought under 42 U.S.C. §1983 for damages and other relief arising from the deliberate, arbitrary and discriminatory acts of the Defendants that have deprived Plaintiffs of their rights to Due Process and Equal Protection of the Laws under the Fourteenth Amendment to the United States Constitution, and of their right to be free from unreasonable search and seizure pursuant to the Fourth and Fourteenth

Amendments to the United States Constitution.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. §§1331 and 1343(a)(4), conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights and 28 U.S.C. §§2201 & 2202 (authorizing declaratory and injunctive relief).

3. Venue of this action lies in the United States District Court for the Western District of New York, pursuant to 28 U.S.C. §1391(b), because it is the judicial district where the claims arose and where the parties reside.

FACTS

4. Plaintiff Gloria Johnson is a citizen of the United States and a resident of the County of Erie, State of New York.

5. Plaintiff Johnson, at the times relevant hereto, owned certain real property commonly known as 9366 Cattaraugus Street in the Town of Concord, County of Erie.

6. Said property was and is principally improved by a single-family dwelling. Plaintiff Johnson and her children lived in said single-family dwelling at the aforesaid premises.

7. Plaintiff Cameron Youngs is a son of Plaintiff Johnson, and at all times relevant hereto, resided in Plaintiff Johnson's household at 9366 Cattaraugus Street.

8. Plaintiff Cameron Youngs is a citizen of the United States and, at the time of the entry, search and seizure described *infra*, he had attained the age of majority.

9. Plaintiff Cara Youngs is a citizen of the United States, a resident of the

County of Erie, and at all times relevant hereto, resided in Plaintiff Johnson's household on the premises commonly known as 9366 Cattaraugus Street.

Robinson's First House Search

10. Defendant Robinson, as the appointed Dog Control Officer ("DCO") of the Town of Concord, had various duties, primarily for the purpose of enforcing the dog licensing provisions of Article 1 of the New York Ag & Markets Law.

11. Generally, the statute requires that the owner of any dog reaching the age of 4 months immediately apply for a dog license. Such licenses have a duration of approximately one year, and must be renewed so that for each dog a license is continually in effect. An application for a license requires, with some exceptions, that a rabies certificate be presented as proof that the dog is vaccinated for rabies throughout the licensing period. Applications for a dog license are made to, and the dog license itself is issued by, the Clerk of the Town (or certain other municipalities) in which the dog is harbored. See, generally, New York Ag & Markets Law §109 subd. 1.

12. Ag & Markets Law §109 includes the following provision:

No license shall be required for any dog which is under the age of 4 months and which is not at large.

13. DCOs have certain powers conferred by statute, among them being the power to issue an appearance ticket pursuant to §150.20 of the New York Criminal Procedure Law, to serve a summons and to serve and execute any other order or process in the execution of the provisions of New York Ag & Markets Law Article 1. In addition, a DCO may serve any process, including an appearance ticket, uniform appearance ticket and a uniform appearance ticket and simplified information, related to any criminal or civil proceeding undertaken in accordance with the provisions of New

York Ag & Markets Law Article 1 and any local law or ordinance promulgated pursuant thereto.

14. A DCO is empowered to, *inter alia*, seize stray dogs and unlicensed dogs. When a DCO seizes a stray dog, a five day redemption period commences, during which the owner may retrieve her dog upon paying impoundment fees and submitting proof that a dog license for the dog is in force.

15. When the DCO seizes an identified dog, the DCO must notify the owner of record personally or by certified mail, return receipt requested, of the facts of seizure and the procedure for redemption. Depending on the method of notice, a redemption period of either 7 or 9 days commences from notification.

16. The New York State Department of Agriculture and Markets has prescribed a form, identified as DL-18, which, in §8, prescribes the form of a "Notification of Seizure." A copy is annexed hereto and made a part hereof as Exhibit A.

17. New York Ag & Markets Law §108 subds. 15 & 16, define the terms "Owner" and "Owner of Record." When a DCO seizes an unlicensed dog, the "owner of record" is the "owner" as defined in the statute, which means any person who harbors or keeps any dog.

18. Under the statutory scheme, when an unlicensed dog is seized from premises on which a person is harboring or keeping the dog, that person is deemed to be the owner and the owner of record and is entitled to notification of seizure.

19. If a dog goes unredeemed at the expiration of the appropriate redemption period, the owner is deemed as having forfeited title to the dog. In that event, the dog is

made available for adoption (as defined in the statute) or euthanization.

20. Under New York Ag & Markets Law §118, a failure to license any dog, and certain other transgressions, is a violation punishable either under the New York Penal Law or by an action to recover a civil penalty. In the case of the former, the statute prescribes minimum fines and, in the event of a second and/or subsequent violation within a period of five years, imprisonment for not more than fifteen days; if prosecuted in an action to recover a civil penalty, minimum penalties range from \$25 to \$100.

21. At no point in time was Defendant Robinson a Peace Officer as defined in the New York Criminal Procedure Law; Dog Control Officers from most municipalities, including the Town of Concord, are not Peace Officers defined in the statute.

22. DCOs have no power to arrest.

23. Plaintiff Johnson's family is a large one.

24. For the benefit of her family, Plaintiff Johnson has several dogs that constitute family pets.

25. Several of the dogs harbored and kept at Plaintiff Johnson's residence are unsprayed and periodically have litters.

26. When that happens, Plaintiff Johnson either gives or sells the puppies.

27. Unless and until the puppies have attained the age of 4 months, Plaintiff Johnson does not apply for, or obtain, dog licenses for them; nor is she required to by law.

28. Sometimes Plaintiff Johnson will obtain dogs from out of state, generally through a gift or adoption, and bring them to her residence where they are harbored and kept.

29. Upon information and belief, for such dogs, a 30 day exemption from the identification and licensing provisions of Article 1 of the New York Ag & Market Law exists.

30. Defendant Robinson has served as Town of Concord DCO since in or about the year 2000.

31. Over the years, Robinson has developed a strong personal dislike toward Plaintiff Johnson. For reasons unknown to Plaintiffs, Robinson is averse to Plaintiff Johnson breeding and selling puppies, even though, given the relative infrequency of the litters, and the number of dogs kept and harbored on the Johnson premises, there was no violation of law in such.

32. Plaintiffs' dogs are kept confined to house, or outdoor pens, or are walked on leash.

33. There is no history of any dogs from the Johnson premises roaming off the premises and onto other persons' private property or onto streets and other public places. From time to time over the years some of the dogs harbored and kept at Plaintiffs' residence required licenses, but were altogether licensed or had expired licenses. Given that DCO Robinson's duties included bringing persons into compliance with dog licensing requirements, and also given Plaintiffs' general willingness to be in compliance, there were ways for DCO Robinson to discharge her duties with respect to Plaintiffs that minimized the invasion of Plaintiffs' privacy and were constitutionally permissible.

34. Defendant Robinson, however, opted to choose constitutionally impermissible methods. In or about the month of July, 2009, while Plaintiff Johnson

was at home, DCO Robinson, without Plaintiffs' consent or invitation, entered the Johnson residence, opening and entering through a door on the exterior of the house into a breezeway, and thence opening and entering the house through an interior door, walking into the kitchen.

35. Plaintiff Johnson encountered her and instructed her to go and to never enter the house unless pursuant to a lawful warrant.

36. Defendant Robinson had no warrant permitting such entry.

37. This warrantless entry was part of a series of Robinson's efforts to cause legal troubles for Plaintiff Johnson. For example, Robinson developed a friendship with Plaintiff Johnson's sister, one Judy Keefe. Ms. Keefe, who is estranged from Plaintiff Johnson, has engaged in a pattern of making numerous, wholly meritless, complaints of neglect against Plaintiff Johnson to the New York State Department of Social Services Child Protective Services.

38. Upon information and belief, Defendant Robinson joined Keefe's campaign, and made similar meritless accusations of child neglect against Plaintiff Johnson to Child Protective Services.

39. Over the years, such complaints mounted to well over 200.

40. Child Protective Services investigated each and every complaint and determined every single one to be "unfounded."

The Illegal Search Of November 2, 2009

41. On or about November 1, 2009, without invitation or consent of Plaintiff Johnson or any occupant of the Johnson premises, Defendant Robinson again entered the Johnson residence, entering through an exterior door into a breezeway and thence

through a closed door into the kitchen of the residence.

42. Plaintiff Johnson instructed Robinson to leave and to stay off her premises altogether and not to enter the house unless pursuant to a valid search warrant.

43. Defendant Robinson had no warrant, on that date or on any other date, permitting her to enter onto Plaintiff Johnson's real property generally, or into her house specifically.

The Seizure Of December 2, 2009

44. Plaintiff Johnson, following the aforesaid illegal entries, and perceiving Defendant Robinson as determined to deprive Plaintiff Johnson of her rights of animal ownership, and the right to sell puppies, entered into a certain agreement with one Jamie Dispenza and his wife.

45. The Dispenzas agreed to harbor 7 saleable puppies that were the property of Plaintiff Johnson. Of the 7 puppies, one was a Chihuahua named "Dewey." Plaintiff Johnson had informed the Dispenzas of her intent to give Dewey to the Dispenza children, who were very fond of the animal, as a Christmas gift.

46. On December 2, 2009, accompanied by unknown Erie County Sheriff's Deputies and other persons, Robinson entered the Dispenza residence and took 19 dogs, of which 15 were puppies, including the 7 puppies Plaintiff Johnson owned.

47. Upon information and belief, Robinson transported 16 of them, including Plaintiff Johnson's 7 puppies, to Defendant SPCA that day.

48. No charges of animal cruelty or any other legal violation were brought against any member of the Dispenza family, or against Plaintiff Johnson, with respect to the dogs Robinson seized on December 2, 2009.

49. Of the six puppies and one dog Robinson seized on that date, comprising the 7 that belonged to Plaintiff Johnson, three were approximately 3 ½ to 4 months of age, two were 7-8 weeks old, one was approximately 5 weeks old, and the other approximately 2 years old. It was evident to Robinson and any other reasonable person that three of the dogs clearly required no dog license, and that an additional three were on the verge of requiring a dog license.

50. Defendants Robinson and SPCA disposed of Plaintiff's 7 puppies, though their disposition is unknown to Plaintiff Johnson.

51. Upon information and belief, all 7 puppies were sold, for a collective price of several thousand dollars, all of which was retained by Defendants Robinson and/or SPCA.

The January 13, 2010 Search And Seizure

52. At the time of the January 13, 2010 entry, search and seizure described *infra*, Plaintiff Cara Youngs had not attained the age of majority; since that date, she has attained the age of majority.

53. On the morning of January 13, 2010 five persons, all acting under the color of law, entered onto Plaintiff Johnson's real property at 9366 Cattaraugus Street in the Town of Concord, County of Erie, State of New York.

54. The five persons drove onto the property in three or more motor vehicles, parked them, examined parts of the premises not visible from the public highway, and then entered the single-family residence which Plaintiff Johnson owned and at which she resided with her family, photographed the interior of the premises, and seized 16 animals, 15 of which were dogs and 1 of which was a horse.

55. One of these individuals was Defendant Carolyn Robinson, the Dog Control Officer of the Town of Concord, Erie County, New York.

56. Robinson was the Dog Control Officer ("DCO") for the Town of Concord appointed by the Town Board of the Town of Concord for the purpose of enforcing Article 1 of the Agriculture & Markets ("Ag & Markets") Law of the State of New York, and was acting as such throughout the events complained of below.

57. Robinson was the only person who made and implemented policy for the purpose of enforcing Article 1 of the Ag & Markets Law within the Town of Concord.

58. Defendant Lindsey M. Styborski was a second participant.

59. Styborski, upon information and belief, was a "Peace Officer" designated under §2.10 subd. 7-a and, upon information and belief, was acting pursuant to her "special duties" within the meaning of said statute.

60. At the times relevant hereto, she bore the powers set forth in New York Criminal Procedure Law §2.20 and New York Ag & Markets Law §371.

61. Styborski was an employee of the Society for the Prevention of Cruelty to Animals Serving Erie County. Upon information and belief, by job title, licensing, appointment and/or training, she was a "Peace Officer" whose special duties entailed enforcement of the laws of the State of New York pertaining to the prevention of cruelty to animals, including the provisions of Article 26 of the New York Ag & Markets Law.

62. Defendant Aaron Kandefer was a third participant.

63. Kandefer, upon information and belief, was a "Peace Officer" designated under §2.10 subd. 7-a and, upon information and belief, was acting pursuant to his "special duties" within the meaning of said statute.

64. At the times relevant hereto, he bore the powers set forth in New York Criminal Procedure Law §2.20 and New York Ag & Markets Law §371.

65. Kandefer was an employee of the Society for the Prevention of Cruelty to Animals Serving Erie County. Upon information and belief, by job title, licensing, appointment and/or training, he was a "Peace Officer" whose special duties entailed enforcement of the laws of the State of New York pertaining to the prevention of cruelty to animals, including the provisions of Article 26 of the New York Ag & Markets Law.

66. Throughout the aforesaid entry, search and seizure, Defendants Styborski and Kandefer wore jackets which, in very large letters, identified themselves as "Special Agent."

67. Defendant John Doe #1, believed to bear the last name "Houck," was a fourth participant in the aforesaid entry, search and seizure.

68. Defendant John Doe #1 was a Deputy Sheriff employed by the Erie County Sheriff and the County of Erie.

69. Said John Doe #1, upon information and belief, was acting throughout the aforesaid entry, search and seizure in his capacity as a Deputy Sheriff with the powers of a "Peace Officer" as defined in §§2.10 & 2.20 of Article 2 of the Criminal Procedure Law of the State of New York, including the powers to arrest, administer physical force and deadly physical force for the purpose of effectuating arrests, and to search and seize private property to the extent constitutionally permissible.

70. Defendant John Doe #2, believed to bear the last name "Ulinger," was a fifth participant in the aforesaid entry, search and seizure.

71. Defendant John Doe #2 was a Deputy Sheriff employed by the Erie

County Sheriff and the County of Erie.

72. Said John Doe #2, upon information and belief, was acting throughout the aforesaid entry, search and seizure in his capacity as a Deputy Sheriff with the powers of a "Peace Officer" as defined in §§2.10 & 2.20 of Article 2 of the Criminal Procedure Law of the State of New York, including the powers to arrest, administer physical force and deadly physical force for the purpose of effectuating arrests, and to search and seize private property to the extent constitutionally permissible.

73. Defendant Society for the Prevention of Cruelty to Animals Serving Erie County is, upon information and belief, a domestic not-for-profit corporation.

74. Defendants Styborski and Kandefer, at the time of the aforesaid entry, search and seizure, were acting as its agents and officers.

75. Defendant County of Erie is a municipal corporation chartered pursuant to authority granted by an act of the Legislature of the State of New York.

76. At sometime after 9:50 a.m., and before 11:00 a.m., on January 13, 2010, the non-corporate Defendants entered onto the premises commonly known as 9366 Cattaraugus Street, hereafter referred to as the "Johnson premises."

77. Plaintiff Johnson was running errands. The other household members, i.e., her children, were at work or at school. The Johnson residence, during that brief period of time, was unoccupied.

78. When Plaintiff Johnson's son William arrived home at approximately 11:00 a.m., he observed Defendants' vehicles parked in the driveway and the non-corporate Defendants in the Johnson residence itself.

79. Defendants, at said date and time, and at any other date or time before or

since, lacked a warrant permitting them to arrest Plaintiffs, or to arrest any other member of Plaintiffs' household, or to search the Johnson premises generally or any part of the Johnson residence in particular.

80. To enter the premises, the non-corporate Defendants opened an exterior door, walked through a breezeway and then opened an interior door providing access to the kitchen.

81. At no point in time did Plaintiffs or any member of their household or any other authorized person consent to the non-corporate Defendants entry onto the premises, search of the Johnson residence, or the subsequent seizure of animals.

82. Defendant Robinson took photographs of the interior of the Johnson residence.

83. Plaintiff Johnson's son William asked the non-corporate Defendants if any of them had a search warrant allowing entry into the residence; he received no response.

84. He then instructed the non-corporate Defendants that, pursuant to the instruction of Plaintiff Johnson that he received telephonically, the non-corporate Defendants were to immediately get out of the house unless they had a search warrant permitting such entry.

85. Said Defendants then exited the dwelling, but stayed on the Johnson premises, going in and out of the various outbuildings and inspecting the exterior premises.

86. Plaintiff Cara Youngs arrived at the Johnson premises at approximately 12:30 p.m., and was instructed to identify herself or be confined to the police car.

87. Plaintiffs Johnson and Cameron Youngs arrived home at approximately 1:15 p.m.

88. Plaintiff Johnson proceeded into the Johnson residence. The two SPCA "special agents" and Defendants John Doe #1 and John Doe #2 followed her into the residence, uninvited and without her consent.

89. One of the John Doe Defendants instructed Plaintiff Johnson to behave and cooperate or face arrest; the other John Doe Defendant did not speak, but he observed, heard and condoned the instructions and threat of Defendant John Doe #1.

90. Defendant Styborski instructed Defendant Kandefer to collect various animal crates and bring them inside the Johnson residence.

91. The non-corporate Defendants collected and crated 15 dogs, most of them from within the Johnson residence, placed them in the Defendant SPCA vehicle, and removed them from the premises. Of the 15 dogs that were seized, two (Sasha and Sir D.O.G.) were owned by Plaintiff Cara Youngs, one (Smokey) was owned by Plaintiff Cameron Youngs, and the balance were owned by Plaintiff Johnson.

92. After Defendants seized the animals and removed them from the premises, Defendants Styborski and Kandefer returned that afternoon and removed a horse named Topaz which belonged to Plaintiff Johnson.

93. Defendants have not returned any of the 16 seized animals to Plaintiffs, or to any member of Plaintiffs' household, or to the Johnson premises.

Criminal Prosecutions And Their Termination In Favor Of Plaintiffs

94. The Defendants commenced, or caused to be commenced, criminal prosecutions against the three Plaintiffs.

95. As to Plaintiff Cameron Youngs, Defendant Styborski swore a complaint accusing him of having violated §353 of the New York Ag & Markets Law, which is a Class A Misdemeanor.

96. Specifically, the complaint and supporting deposition accused Mr. Youngs of cruelty to a certain dog named Smokey.

97. Smokey had a dog license as required by §109 of the New York Ag & Markets Law. Smokey was black and of a mixed, predominantly Chow-Chow, breed.

98. Plaintiff Cameron Youngs had obtained a license for Smokey on or about November 13, 2009.

99. On the day that Mr. Youngs obtained the license, he had brought Smokey to the Pioneer Paws Veterinary Clinic on Olean Road in the hamlet of Chaffee for vaccinations and an examination.

100. Smokey received his vaccinations . His examination showed Smokey was, overall, in very good health.

101. When the SPCA Defendants seized Smokey, and had him examined by a veterinarian who furnished a supporting deposition in support of the misdemeanor animal cruelty charge against Mr. Youngs, her examination concluded Smokey had a whip worm infestation that caused severe diarrhea, coupled with dry, flaky skin and a yeast ear infection.

102. On or about July 14, 2010 in the Town Court of the Town of Concord, upon motion of the Erie County District Attorney, the aforesaid criminal charge against Plaintiff Cameron Youngs was adjourned in contemplation of dismissal.

103. Upon information and belief, said charge was dismissed, with prejudice,

on or about September 8, 2010.

104. Pursuant to New York Penal Law §160.50, the dismissal rendered the charge against Mr. Youngs a nullity.

105. At the time of the July 14, 2010 adjournment, upon information and belief, Plaintiff Cameron Youngs agreed to convey his right, title and interest in and to Smokey over to Defendant SPCA.

106. As to Plaintiff Cara Youngs, Defendant Styborski swore a complaint accusing her of two counts of having violated §353 of the New York Ag & Markets Law, which is a Class A Misdemeanor.

107. Specifically, the complaints and supporting depositions accused Ms. Youngs of cruelty to two dogs, one named Sasha and the other named Sir D.O.G.

108. Four days before they were seized, Ms. Youngs had obtained rabies vaccinations from a veterinarian for her three dogs, including Sasha and Sir D.O.G.

109. On January 13, 2010, the day they were seized, Ms. Youngs did not have a dog license under New York Ag & Markets Law §109 for them; she purchased dog licenses for them on January 14, 2010.

110. For Sasha, a five year old "Yorkie," the medical conditions alleged to constitute cruelty were "dry, itchy, flaky skin," "multiple live fleas," and "moderate dental tarter."

111. The second count against Plaintiff Cara Youngs alleged similar medical conditions with respect to Sir D.O.G., a 2 year old "Yorkie."

112. On or about July 14, 2010 in the Town Court of the Town of Concord, upon motion of the Erie County District Attorney, the aforesaid criminal charges against

Plaintiff Cara Youngs were adjourned in contemplation of dismissal.

113. Upon information and belief, said charges were dismissed, with prejudice, on or about September 8, 2010.

114. Pursuant to New York Penal Law §160.50, the dismissal rendered the charge against Ms. Youngs a nullity.

115. At the time of the July 14, 2010 adjournment, upon information and belief, Plaintiff Cara Youngs agreed to convey her right, title and interest in and to Sasha and Sir D.O.G. over to Defendant SPCA.

116. As to Plaintiff Gloria Johnson, Defendant Styborski swore complaints accusing her of 7 counts of having violated §353 of the New York Ag & Markets Law, which is a Class A Misdemeanor.

117. Specifically, the complaints and supporting depositions accused Johnson of cruelty to 6 dogs and 1 horse.

118. The animals which form the basis of the cruelty charges were 1) a tan chihuahua named Princess, weighing 2 lbs. and approximately 3 years of age, 2) a 5 year old white chihuahua dog (described as "tan" in SPCA's "receipt") named Stewart, 3) an adult tan chihuahua named Winky, 4) a white maltese dog approximately 6 years old named Fancy, 5) a brown and tan chihuahua approximately 6 months old, and weighing 4 lbs., named Sally, 6) an adult poodle named Toola (identified by Defendant SPCA as "Lila") and 7) a horse named Topaz.

119. Plaintiff Johnson acquired Princess, Stewart, Winky and Toola on December 20, 2009, 24 days beforehand, and Plaintiff Johnson had yet to obtain dog licenses for them.

120. Plaintiff Johnson renewed the dog license for Fancy on January 15, 2010.

121. On or about January 15, 2010, Plaintiff Johnson went to the Concord Town Clerk's Office and spoke with the Deputy Town Clerk concerning obtaining dog licenses for any seized dogs she owned that remained unlicensed, i.e., Blue, Sally, Lillie and Tito.

122. The Deputy Town Clerk advised Plaintiff Johnson that she had spoken to Defendant Robinson as to which, if any, of these animals would be released to Plaintiff Johnson upon obtaining dog licenses, and that Robinson had informed her that all of them were being retained by the SPCA pending an "investigation," irrespective of whether Plaintiff Johnson obtained dog licenses for them.

123. On or about July 14, 2010, all counts against Plaintiff Johnson were adjourned, in contemplation of dismissal.

124. Upon information and belief, all said charges were dismissed, with prejudice, on or about September 8, 2010.

125. Pursuant to New York Penal Law §160.50, the dismissals rendered each and every charge against Plaintiff Johnson a nullity.

126. At the time of the July 14, 2010 adjournment, upon information and belief, Plaintiff Johnson agreed to convey her right, title and interest in and to Princess, Stewart, Winky, Sally, Toola, Fancy and Topaz over to Defendant SPCA.

127. Defendant Styborski, on January 13, 2010, told Plaintiff Johnson that she was having the 15 seized animals taken to the SPCA for veterinary checkups.

128. Upon information and belief, veterinary examinations were performed on 6 dogs which Defendants seized on January 13, 2010, which Plaintiff Johnson owned,

identified as Blue, Lillie, a 9 week old puppy named Dawn, two other puppies from the same litter as Dawn, and Tito. Upon information and belief, upon conducting said veterinary examinations, Defendants determined no reasonable cause existed justifying any criminal charges, including animal cruelty charges, against Plaintiffs with respect to said 6 dogs.

129. Upon information and belief, Defendant seized four additional puppies, without providing a receipt for same, including three 8 week old tan Chihuahuas and a 3 month old fawn-colored Chihuahua named "Bambi."

130. Upon information and belief, said inspection took place on or about January 13, 2010, by Karen Moran, DVM, at the time Dr. Moran inspected the other seized animals.

131. By January 14, 2010, approximately, said 6 dogs (Blue, Lillie, Dawn, 2 unnamed 9 week old puppies, and Tito) were known by Defendants 1) **not** to be contraband and 2) **not** to be evidence of a crime.

132. At no point in time after January 13, 2010 and prior to the July 14, 2010, did Defendants give Plaintiff notice of Defendant SPCA's intent to take ownership of said 6 dogs, or of any right to a hearing with respect to same, or of any rights Plaintiff Johnson may have had as to the disposition of said 6 dogs (e.g., return, adoption, sale, etc.).

133. Upon information and belief, the transfer to which Plaintiff Johnson agreed on or about July 14, 2010 was only for the animals that were the basis of the charges against Johnson, and did not extend to the aforesaid 6 dogs which were not the basis for any cruelty charges.

134. At the time of the adjournment on or about July 14, 2010, Plaintiff did not waive or release or compromise any claim she had or may have had against Defendants for having deprived her of all or part of her property ownership rights to the aforesaid 6 dogs during the period between January 13, 2010 and July 14, 2010.

135. Defendant Robinson was present at the courthouse when the charges against Plaintiff Johnson were adjourned in contemplation of dismissal.

136. Defendant Robinson, after the adjournment, approached Plaintiff Johnson and told her (Johnson) that she (Johnson) will never, henceforth, obtain custody of any child or grandchild.

137. Said reference, upon information and belief, was intended as a threat and is explainable only by reference to Defendant Robinson having allied herself with Plaintiff Johnson's estranged sister for the purpose of causing legal and emotional harm to Plaintiff Johnson and her immediate family.

The Flurry Of Traffic Tickets

138. After the adjournment (in contemplation of dismissal) of the criminal charges against Plaintiff Johnson she received an inordinate number of New York Vehicle & Traffic Law charges from Erie County Sheriff's Deputies.

139. In the course of running daily errands including transporting children to and from school, or to and from work, Plaintiff Johnson regularly traveled highways in the Town of Concord and Town of Boston which were patrolled by the Erie County Sheriff's Department.

140. Sheriff's deputies wrote an unreasonable number of tickets against Plaintiff Johnson. Some accused her of cell phone use which were wholly unfounded.

Others accused her of moving violations which, if technically correct, were marginal and infrequently charged against other motorists. For example, it is rare for an Erie County Sheriff's Deputy to charge a motorist with exceeding the 55 mph speed limit if the motorist is traveling at, say, 57 mph.

141. In the case of Plaintiff Johnson, Sheriff's deputies commenced, upon information and belief, a deliberate ticket-writing campaign against Plaintiff Johnson.

142. Plaintiff Johnson is of very modest financial means, and payment of these tickets imposed substantial financial hardship upon her.

143. Furthermore, the sheer volume of tickets made it difficult for Plaintiff Johnson to keep track of the multiple VTL prosecutions.

144. As a result, and unintentionally, and unbeknownst to Plaintiff Johnson, her driver's license was suspended for non-appearance at one of the adjourned court dates associated with the aforesaid tickets.

Defendant John Doe #2 Arrests Plaintiff Johnson On July 15, 2010

145. On July 15, 2010 Plaintiff Johnson drove to the Wal-Mart supercenter outside the Village of Springville, in the Town of Concord, for the purpose of purchasing milk for her family.

146. When Plaintiff exited the store to return to her parked car, she observed a deputy sheriff, to wit, Defendant John Doe #2, believed to bear the last name "Ulinger." He was sitting in his squad car, looking at Plaintiff Johnson and her parked vehicle.

147. As Plaintiff passed by him, he informed her that her car lights were on. She turned them off.

148. He then called Plaintiff Johnson over to his vehicle, stating "this is your

lucky day, you're going to jail."

149. Upon information and belief, the basis was a bench warrant issued by a Town of Boston Town Justice for non-appearance at an adjourned date on a prior VTL charge that had been issued against Plaintiff Johnson as part of the aforesaid ticketing campaign.

150. Other deputy sheriffs arrived by automobile. Defendant John Doe #2 observed that one of them was a rookie, and said to him "what's your badge number – I'll give you the credit." Upon information and belief, the "credit" he was referring to was credit for having arrested Plaintiff Johnson.

151. Defendant John Doe #2, in the course of his arrest of Plaintiff, instructed her to stand spread eagle against the automobile, while he conducted a search, followed by handcuffing Plaintiff and placing her in the back seat of his squad car.

152. At the scene of the arrest, Defendant John Doe #2 chatted at length with the other deputy sheriffs that arrived.

153. He then drove north on Highway 219 toward the City of Buffalo.

154. Defendant John Doe #2 pulled off Route 219 and rendezvoused with another law enforcement officer. While Plaintiff Johnson waited handcuffed in the back seat of the car, John Doe #2 chatted at length with the aforesaid officer.

155. Afterward, Defendant John Doe #2 continued to transport Plaintiff to the Erie County Holding Center. When they arrived at the Holding Center, he sat and idled his car, with Plaintiff handcuffed and confined to the rear seat, for a length of time Plaintiff estimates as more than one hour.

156. In the course of transporting Plaintiff to the Holding Center, John Doe #2,

on his cell phone, called a person Plaintiff believes to be Defendant Carolyn Robinson and told her "she's [Johnson's] in the back seat so go do what you gotta do."

157. Upon information and belief, Defendant John Doe #2 was advising Defendant Robinson that he had arrested Plaintiff Johnson and was confining her, so that Robinson could enter onto the Johnson premises for the purpose of searching, seizing and otherwise attempting to cause legal troubles and harm for and to Plaintiff.

***The Unconstitutional Conditions Of Confinement At
The Erie County Holding Center On July 15, 2010***

158. The Erie County Holding Center is under the management of the Sheriff's Department of the County of Erie. The County Executive is Chris Collins. The County Sheriff is Timothy J. Howard.

159. Plaintiff was arrested on July 15, 2010 by an Erie County Deputy Sheriff and taken later that day to the Erie County Holding Center in the City of Buffalo.

160. Upon arrival, Plaintiff was "booked," which included being photographed and fingerprinted.

161. After booking, Plaintiff was placed in a small holding room often referred to as the "Court hold," roughly 8 feet by 15 feet.

162. At the back of the room was a metal bench which could seat approximately four.

163. Upon information and belief, this room was designed to hold up to four people for short periods while awaiting a hearing or bail. It was not designed for sleeping.

164. The room had a toilet guarded by a low wall (about 3 ½ feet high by six inches wide) that offered very little privacy.

165. The room had a window on the side of the cell with the toilet, and corrections officers (both male and female) walking by the room could easily see the female detainees as they used the toilet.

166. The cell had no toilet paper.

167. Attached to the toilet was a contraption that somewhat resembled a water fountain, however, it was not functional, and Plaintiff and the other inmates were not able to drink water during their time at the Holding Center.

168. Plaintiff was unable to shower or wash her hands while she was in the Holding Center.

169. The room was extremely cold and had a foul odor.

170. When Plaintiff was taken to the room there was less than 30 square feet of space per person.

171. Throughout the time she was at the ECHC, Plaintiff was denied any basic hygiene materials, including a toothbrush and toothpaste.

172. Defendant County knew or should have known of the conditions at the Holding Center. Defendant knew or should have known of the callousness of the corrections officers.

173. Because Defendant was aware or should have been aware, Defendant's conduct rises at least to the level of deliberate indifference, if not deliberate intent to punish.

174. Such deliberate indifference (or deliberate malice) constitutes a policy or custom actionable under a 42 U.S.C. §1983 claim.

**FIRST CLAIM FOR RELIEF:
JULY, 2009 WARRANTLESS SEARCH
IN VIOLATION OF FOURTH AMENDMENT
BY DEFENDANT ROBINSON**

175. The Fourth Amendment to the United States Constitution, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

176. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

177. Defendant Robinson, both individually and as the Dog Control Officer of the Town of Concord, violated Plaintiffs' Fourth Amendment rights to be secure in their persons, houses, papers, and effects, against unreasonable searches when she conducted her aforesaid July, 2009 warrantless entry into the Johnson residence.

178. Plaintiffs' Fourth Amendment rights were secured to them *vis a vis* Defendant Robinson by the Fourteenth Amendment to the United States Constitution.

**SECOND CLAIM FOR RELIEF:
NOVEMBER, 2009 WARRANTLESS SEARCH
IN VIOLATION OF FOURTH AMENDMENT
BY DEFENDANT ROBINSON**

179. The Fourth Amendment to the United States Constitution, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

180. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

181. Defendant Robinson, both individually and as the Dog Control Officer of the Town of Concord, violated Plaintiffs' Fourth Amendment rights to be secure in their persons, houses, papers, and effects, against unreasonable searches when she conducted her aforesaid November, 2009 warrantless entry into the Johnson residence.

182. Plaintiffs' Fourth Amendment rights were secured to them *vis a vis* Defendant Robinson by the Fourteenth Amendment to the United States Constitution.

**THIRD CLAIM FOR RELIEF:
DECEMBER 2, 2009 ILLEGAL SEIZURE IN
VIOLATION OF FOURTH AMENDMENT BY
DEFENDANT ROBINSON**

183. The Fourth Amendment to the United States Constitution, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue,

but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

184. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

185. The Fourteenth Amendment extends the protections of the Fourteenth Amendment to Plaintiffs *vis a vis* state actors.

186. The aforesaid December 2, 2009 seizure by Defendant Robinson of 7 puppies which Plaintiff Johnson owned was in violation of Plaintiff's Fourth and Fourteenth Amendment rights to be secure against unreasonable seizures.

187. As a consequence of these violations, Plaintiff Johnson sustained injury including, but not limited to, the loss of property.

**FOURTH CLAIM FOR RELIEF:
NEW YORK COMMON LAW CONVERSION
CLAIM AGAINST DEFENDANTS SPCA
AND ROBINSON
FOR ACQUISITION OF SEVEN PUPPIES
ON DECEMBER 2, 2009 AND
SUBSEQUENT DISPOSITION THEREOF**

188. Defendants SPCA's and Robinson's seizure of 7 puppies which were the personal property of Plaintiff Johnson, that occurred on December 2, 2009 and which is described *supra*, and their subsequent disposition thereof, constituted the conversion of Plaintiff's personal property to the benefit and enrichment of the SPCA and Robinson

Defendants and others to whom said Defendants gave or sold the property, all to Plaintiff Johnson's loss, and without her consent.

**FIFTH CLAIM FOR RELIEF:
DECEMBER 2, 2009 ILLEGAL SEIZURE
IN VIOLATION OF FOURTH AMENDMENT
BY DEFENDANT SPCA**

189. The Fourth Amendment to the United States Constitution, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

190. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

191. The Fourteenth Amendment extends the protections of the Fourteenth Amendment to Plaintiffs *vis a vis* state actors.

192. The aforesaid December 2, 2009 seizure by Defendant SPCA of 7 puppies which Plaintiff Johnson owned was in violation of Plaintiff's Fourth and Fourteenth Amendment rights to be secure against unreasonable seizures.

193. As a consequence of these violations, Plaintiff Johnson sustained injury including, but not limited to, the loss of property.

**SIXTH CLAIM FOR RELIEF:
PROCEDURAL DUE PROCESS CLAIM
BASED ON INADEQUATE STATE PROCEDURES
AGAINST DEFENDANTS ROBINSON AND SPCA
AS TO SEVEN PUPPIES SEIZED ON
DECEMBER 2, 2009**

194. The Fourteenth Amendment to the United States Constitution, states, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**

(Emphasis added).

195. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

196. New York law empowers DCOs and Societies For The Prevention Of Cruelty To Animals to seize dogs under certain prescribed circumstances.

197. New York Ag & Markets Law Article 7 pertains to the licensing of dogs and to administration and enforcement of the licensing program.

198. References herein to the Ag & Markets Law are to the law as it was in effect in calendar year 2009 and prior to October 9, 2010, when the program's statutes

were amended and renumbered.

199. Under Ag & Market Law §118, a DCO and, under certain circumstances, a peace officer or police officer, were authorized to seize dogs that are neither “identified” within the meaning of the statute and which are not on the owner’s premises, or, for dogs that are not licensed, either on or off the owner’s premises, among other circumstances not relevant hereto.

200. For dogs that are not identified, owners may redeem their dogs upon producing proof that the dog has been licensed and identified and upon payment of impoundment fees.

201. For identified dogs, New York Ag & Markets Law §118 required the seizing officer to notify the owner of record personally or by certified mail, return receipt requested, of the facts of seizure and the procedure for redemption. Depending on the form of notification, i.e., service personally or by certified mail, a redemption period of 7 days or 9 days, respectively, is triggered.

202. New York Ag & Markets Law §109 provides that:

No license shall be required for any dog which is under the age of 4 months and which is not at large. . .

203. Sixteen of the nineteen dogs which Robinson seized on December 2, 2009 from the Dispenza premises were puppies whose age was much less than 4 months, and this was, or should have been, evident to Robinson.

204. The procedures of the New York Ag & Market Law Article 7, including those relating to the seizure of dogs set forth in §118 thereof, were wholly inapplicable to the nature of the seizure that Defendant Robinson effectuated on December 2, 2009.

205. The Article 7 seizure provisions relate to the seizure of unlicensed dogs

(as well as to the seizure of dogs that are abandoned, stray, homeless and otherwise loose on public premises); Plaintiff Johnson's seven puppies maintained at the Dispenza premises were wholly exempt from licensing by reason of being only several days old, and hence far less than 4 months of age.

206. New York State law establishes no procedures by which a dog owner may recover possession, prior to disposition of the dog, for license-exempt puppies seized from private premises by a DCO.

207. Nor did Defendant Robinson establish any *ad hoc* procedure. There was no form of notice, no pronouncement or establishment of a method by which possession could be regained, and no other procedure adopted or implemented that could arguably constitute meaningful notice and a meaningful opportunity to be heard.

208. The New York State Department of Ag & Markets has created a model form (DL-18, a copy of which is Exhibit A hereto) which is intended to track unlicensed and at-large dogs from seizure to disposition. DL-18's require a DCO to record identifying information about a seized dog; it prescribes the form of notice of redemption rights and identifies the two methods of notification coupled with applicable redemption periods; it also logs and details which of the three methods of disposition (redemption, adoption or euthanasia) results for each seized dog.

209. Defendant Robinson did not complete DL-18 forms for any of the aforesaid sixteen puppies exempt from licensing by reason of young age that she seized on December 2, 2009.

210. Defendant Robinson has given different accounts as to the disposition of the seized puppies.

211. On one hand, Robinson has reported that all sixteen, including Plaintiff Johnson's seven seized puppies, were transported on the day of seizure to Defendant SPCA.

212. On the other hand, Defendant Robinson has stated publicly that the dogs were placed in "foster care" because the Defendant SPCA does a poor job of caring for puppies as young as the ones Defendant Robinson seized on December 2, 2009.

213. Upon information and belief, Defendant SPCA did take possession of some or all of said puppies and disposed of them by selling them to members of the public, and retaining the proceeds thereof for itself.

214. Upon information and belief, Defendant Robinson disposed of some of the aforesaid puppies, including some of Plaintiff Johnson's aforesaid seven puppies, by selling them and representing such transaction as placement in "foster care."

215. There is an absence of New York State procedures governing the seizure and acquisition of dogs that are exempt from licensing requirements.

216. Whatever *ad hoc* procedures Defendants Robinson and SPCA utilized relative to Plaintiff Johnson's seven puppies seized on December 2, 2009, they were inadequate to constitute due process within the meaning of the Fourteenth Amendment.

217. Even were there no need for notice and hearing prior to the December 2, 2009 seizure, on the basis that seizure was justified by the need for quick action, once Defendants Robinson and SPCA took possession of the seized animal, there was ample opportunity and justification for providing notice and opportunity to be heard.

218. The existence of notice coupled with a hearing opportunity would have provided Plaintiff Johnson an opportunity to prove her ownership of seven of the

puppies that were seized.

219. It was reasonably foreseeable to said Defendants that possession of the puppies does not equate with ownership under all circumstances.

220. An opportunity for a hearing would have allowed Plaintiff Johnson an opportunity to learn why said Defendants took possession of her puppies with the intent of disposing them, coupled with an opportunity to rebut said reason, if there were one.

221. Upon information and belief, it was known to Defendant SPCA that Plaintiff's puppies which Defendant Robinson delivered to Defendant SPCA had been seized, were not subject to licensing requirements, and that the SPCA's acquisition and ultimate disposition of them was not governed by New York Ag & Markets Law Articles 7 and 26.

222. Defendant Robinson's December 2, 2009 seizure and her subsequent conveyance and/or disposition of the seized dogs was under color of New York law, in that she represented herself as a DCO at the time of seizure, seized the animals in the presence of one or more police officers, and subsequently held herself out as having seized the dogs pursuant to her authority as DCO.

223. Defendant SPCA, at the time it took possession and through the time it ultimately disposed of the dogs, was acting under color of New York law, as is evidenced by accepting possession of the animals knowing that they had been seized, by boarding the animals without obtaining dog licenses if and when the dogs attain the age of 4 months (SPCA impoundments are exempt from the dog licensing requirement), and by representing itself as having the power to sell and convey the animals to members of the public.

224. New York Ag & Markets Law §373 governs the seizure of animals that are lost, stray, homeless, abandoned or improperly confined or kept, including those that are the basis of an animal cruelty charge under New York Ag & Markets Law §353.

225. New York Ag & Market Law §§372 & 373 permit peace officers to obtain search warrants and arrest warrants, upon demonstrating just and reasonable cause as to the existence of criminal violations, and to initiate a proceeding under §373 subd. 2, for confining or keeping animals for a period in excess of 12 successive hours in crowded or unhealthy conditions or without necessary sustenance, food or drink.

226. When SPCA peace officers press such charges, the defendant/owner may forfeit title to the seized animals under one of two applicable procedures.

227. Under one such procedure, pursuant to Ag & Markets Law §373 subd. 6, the SPCA presents and serves at arraignment of a defendant a petition requesting the court to order the defendant to post a security sufficient to cover the cost of boarding and caring for the seized animal(s) during the pendency of the proceedings. The defendant may contest the petition, in which case the court conducts a hearing at which the burden of proof is upon the SPCA to demonstrate by a preponderance of the evidence that Ag & Market Law Article 26 violations exist warranting the relief requested. If the petition is granted, the court sets the amount of the required security, and if the defendant fails to post same within a prescribed length of time, the defendant forfeits title to the animals.

228. Alternatively, upon conviction of an Article 26 crime, the defendant forfeits title to the animal which is the basis of the charge.

229. No person, including Defendants Robinson and SPCA, initiated any

animal cruelty charges or any other New York Ag & Markets Law Article 26 proceeding against any person relative to the 19 dogs (of which 7 belonged to Plaintiff Johnson) which were seized on December 2, 2009.

230. Because the 7 puppies were not the basis of any Article 26 charges, and were not the basis of any other proceeding, including any proceeding under New York Ag & Markets Law Article 26, there were no established State procedures pertaining to Defendants Robinson's and SPCA's seizure, acquisition and disposition of Plaintiff Johnson's 7 dogs seized on December 2, 2009.

231. Said seizure, acquisition and disposition deprived Plaintiff Johnson of property without the due process of law in violation of the Fourteenth Amendment.

**SEVENTH CLAIM FOR RELIEF:
PROCEDURAL DUE PROCESS CLAIM
AGAINST DEFENDANTS ROBINSON AND SPCA
AS POLICY MAKERS: FAILURE TO PROVIDE
PLAINTIFF JOHNSON THE PROCESS
SHE WAS DUE AS TO SEVEN PUPPIES
SEIZED ON DECEMBER 2, 2009**

232. The Fourteenth Amendment to the United States Constitution, states, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**

(Emphasis added).

233. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

234. Irrespective of the adequacy of such State procedures that were in existence on December 2, 2009 relative to Defendants Robinson's and SPCA's seizure, acquisition and disposition of Plaintiff Johnson's 7 puppies seized on December 2, 2009, said Defendants did not utilize or afford to Plaintiff procedures, including notice and opportunity to be heard, sufficient to accord Plaintiff the Due Process of Law.

**EIGHTH CLAIM FOR RELIEF:
JANUARY 13, 2010 ILLEGAL SEARCH IN
VIOLATION OF FOURTH AMENDMENT BY
DEFENDANT ROBINSON**

235. The Fourth Amendment to the United States Constitution, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

236. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

237. Defendant Robinson's January 13, 2010 search of Plaintiffs' residence was warrantless, unreasonable and in violation of all Plaintiffs' Fourth Amendment rights.

**NINTH CLAIM FOR RELIEF:
PROCEDURAL DUE PROCESS CLAIM
BASED ON INADEQUATE STATE PROCEDURES
AGAINST DEFENDANT SPCA
AS TO SIX DOGS SEIZED ON
JANUARY 13, 2010**

238. The Fourteenth Amendment to the United States Constitution, states, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**

(Emphasis added).

239. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

240. New York law empowers DCOs and Societies For The Prevention Of Cruelty To Animals to seize dogs under certain prescribed circumstances.

241. New York Ag & Markets Law Article 7 pertains to the licensing of dogs and to administration and enforcement of the licensing program.

242. References herein to the Ag & Markets Law are to the law as it was in effect in calendar year 2009 and prior to October 9, 2010, when the program's statutes were amended and renumbered.

243. Under Ag & Market Law §118, a DCO and, under certain circumstances, a peace officer or police officer, were authorized to seize dogs that are neither "identified" within the meaning of the statute and which are not on the owner's premises, or, for dogs that are not licensed, either on or off the owner's premises, among other circumstances not relevant hereto.

244. For dogs that are not identified, owners may redeem their dogs upon producing proof that the dog has been licensed and identified and upon payment of impoundment fees.

245. For identified dogs, New York Ag & Markets Law §118 required the seizing officer to notify the owner of record personally or by certified mail, return receipt requested, of the facts of seizure and the procedure for redemption. Depending on the form of notification, i.e., service personally or by certified mail, a redemption period of 7 days or 9 days, respectively, is triggered.

246. New York Ag & Markets Law §109 provides that:

No license shall be required for any dog which is under the age of 4 months and which is not at large. . .

247. Sixteen of the nineteen dogs which Robinson seized on December 2, 2009 from the Dispenza premises were puppies whose age was much less than 4 months, and this was, or should have been, evident to Robinson.

248. The procedures of the New York Ag & Market Law Article 7, including those relating to the seizure of dogs set forth in §118 thereof, were wholly inapplicable to the nature of the seizure that Defendant Robinson effectuated on December 2, 2009.

249. The Article 7 seizure provisions relate to the seizure of unlicensed dogs (as well as to the seizure of dogs that are abandoned, stray, homeless and otherwise loose on public premises); Plaintiff Johnson's seven puppies maintained at the Dispenza premises were wholly exempt from licensing by reason of being only several days old, and hence far less than 4 months of age.

250. New York State law establishes no procedures by which a dog owner may recover possession, prior to disposition of the dog, for license-exempt puppies seized from private premises by a DCO.

251. Nor did Defendant Robinson establish any *ad hoc* procedure. There was no form of notice, no pronouncement or establishment of a method by which possession could be regained, and no other procedure adopted or implemented that could arguably constitute meaningful notice and a meaningful opportunity to be heard.

252. The New York State Department of Ag & Markets has created a model form (DL-18, a copy of which is Exhibit A hereto) which is intended to track unlicensed and at-large dogs from seizure to disposition. DL-18's require a DCO to record identifying information about a seized dog; it prescribes the form of notice of redemption rights and identifies the two methods of notification coupled with applicable redemption periods; it also logs and details which of the three methods of disposition (redemption, adoption or euthanasia) results for each seized dog.

253. Defendant Robinson did not complete DL-18 forms for any of the

aforesaid sixteen puppies exempt from licensing by reason of young age that she seized on December 2, 2009.

254. Defendant Robinson has given different accounts as to the disposition of the seized puppies.

255. On one hand, Robinson has reported that all sixteen, including Plaintiff Johnson's seven seized puppies, were transported on the day of seizure to Defendant SPCA.

256. On the other hand, Defendant Robinson has stated publicly that the dogs were placed in "foster care" because the Defendant SPCA does a poor job of caring for puppies as young as the ones Defendant Robinson seized on December 2, 2009.

257. Upon information and belief, Defendant SPCA did take possession of some or all of said puppies and disposed of them by selling them to members of the public, and retaining the proceeds thereof for itself.

258. Upon information and belief, Defendant Robinson disposed of some of the aforesaid puppies, including some of Plaintiff Johnson's aforesaid seven puppies, by selling them and representing such transaction as placement in "foster care."

259. There is an absence of New York State procedures governing the seizure and acquisition of dogs that are exempt from licensing requirements.

260. Whatever *ad hoc* procedures Defendants Robinson and SPCA utilized relative to Plaintiff Johnson's seven puppies seized on December 2, 2009, they were inadequate to constitute due process within the meaning of the Fourteenth Amendment.

261. Even were there no need for notice and hearing prior to the December 2, 2009 seizure, on the basis that seizure was justified by the need for quick action, once

Defendants Robinson and SPCA took possession of the seized animal, there was ample opportunity and justification for providing notice and opportunity to be heard.

262. The existence of notice coupled with a hearing opportunity would have provided Plaintiff Johnson an opportunity to prove her ownership of seven of the puppies that were seized.

263. It was reasonably foreseeable to said Defendants that possession of the puppies does not equate with ownership under all circumstances.

264. An opportunity for a hearing would have allowed Plaintiff Johnson an opportunity to learn why said Defendants took possession of her puppies with the intent of disposing them, coupled with an opportunity to rebut said reason, if there were one.

265. Upon information and belief, it was known to Defendant SPCA that Plaintiff's puppies which Defendant Robinson delivered to Defendant SPCA had been seized, were not subject to licensing requirements, and that the SPCA's acquisition and ultimate disposition of them was not governed by New York Ag & Markets Law Articles 7 and 26.

266. Defendant Robinson's December 2, 2009 seizure and her subsequent conveyance and/or disposition of the seized dogs was under color of New York law, in that she represented herself as a DCO at the time of seizure, seized the animals in the presence of one or more police officers, and subsequently held herself out as having seized the dogs pursuant to her authority as DCO.

267. Defendant SPCA, at the time it took possession and through the time it ultimately disposed of the dogs, was acting under color of New York law, as is evidenced by accepting possession of the animals knowing that they had been seized,

by boarding the animals without obtaining dog licenses if and when the dogs attain the age of 4 months (SPCA impoundments are exempt from the dog licensing requirement), and by representing itself as having the power to sell and convey the animals to members of the public.

268. New York Ag & Markets Law §373 governs the seizure of animals that are lost, stray, homeless, abandoned or improperly confined or kept, including those that are the basis of an animal cruelty charge under New York Ag & Markets Law §353.

269. New York Ag & Market Law §§372 & 373 permit peace officers to obtain search warrants and arrest warrants, upon demonstrating just and reasonable cause as to the existence of criminal violations, and to initiate a proceeding under §373 subd. 2, for confining or keeping animals for a period in excess of 12 successive hours in crowded or unhealthy conditions or without necessary sustenance, food or drink.

270. When SPCA peace officers press such charges, the defendant/owner may forfeit title to the seized animals under one of two applicable procedures.

271. Under one such procedure, pursuant to Ag & Markets Law §373 subd. 6, the SPCA presents and serves at arraignment of a defendant a petition requesting the court to order the defendant to post a security sufficient to cover the cost of boarding and caring for the seized animal(s) during the pendency of the proceedings. The defendant may contest the petition, in which case the court conducts a hearing at which the burden of proof is upon the SPCA to demonstrate by a preponderance of the evidence that Ag & Market Law Article 26 violations exist warranting the relief requested. If the petition is granted, the court sets the amount of the required security, and if the defendant fails to post same within a prescribed length of time, the defendant

forfeits title to the animals.

272. Alternatively, upon conviction of an Article 26 crime, the defendant forfeits title to the animal which is the basis of the charge.

273. No person, including Defendants Robinson and SPCA, initiated any animal cruelty charges or any other New York Ag & Markets Law Article 26 proceeding against any person relative to the 19 dogs (of which 7 belonged to Plaintiff Johnson) which were seized on December 2, 2009.

274. Because the 7 puppies were not the basis of any Article 26 charges, and were not the basis of any other proceeding, including any proceeding under New York Ag & Markets Law Article 26, there were no established State procedures pertaining to Defendants Robinson's and SPCA's seizure, acquisition and disposition of Plaintiff Johnson's 7 dogs seized on December 2, 2009.

275. Said seizure, acquisition and disposition deprived Plaintiff Johnson of property without the due process of law in violation of the Fourteenth Amendment.

**TENTH CLAIM FOR RELIEF:
PROCEDURAL DUE PROCESS CLAIM
AGAINST DEFENDANTS ROBINSON AND SPCA
AS POLICY MAKERS: FAILURE TO PROVIDE
PLAINTIFF JOHNSON THE PROCESS
SHE WAS DUE AS TO SIX DOGS
(NOT THE BASIS OF CRUELTY CHARGES)
SEIZED ON JANUARY 13, 2010**

276. The Fourteenth Amendment to the United States Constitution, states, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**

(Emphasis added).

277. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

278. The Defendants Robinson and SPCA, by seizing 6 dogs from Plaintiff Johnson (which were not the basis of any animal cruelty or other charges) on January 13, 2010, deprived Plaintiff Johnson of property without the due process of law in violation of Plaintiff Johnson's Fourteenth Amendment rights.

**ELEVENTH CLAIM FOR RELIEF:
NEW YORK COMMON LAW CONVERSION
CLAIM AGAINST DEFENDANT SPCA
FOR ACQUISITION OF SIX DOGS
(NOT THE BASIS OF CRUELTY CHARGES)
ON JANUARY 13, 2010 AND
SUBSEQUENT DISPOSITION THEREOF**

279. Defendants SPCA's seizure, acquisition and subsequent disposition of 6 dogs which were the personal property of Plaintiff Johnson, that occurred on and after January 13, 2010, and which is described *supra*, constituted the conversion of Plaintiff's personal property to the benefit and enrichment of Defendant SPCA and others to whom said Defendant SPCA gave or sold the property, all to Plaintiff Johnson's loss, and without her consent.

**TWELFTH CLAIM FOR RELIEF:
DEPRIVATION OF SUBSTANTIVE DUE PROCESS
(ERIE COUNTY HOLDING CENTER'S
"COURT HOLD" FOR FEMALES)**

280. Plaintiff repeats all the foregoing allegations, including (but not limited to) those set forth in the section of the Statement of Facts under the heading "***The Unconstitutional Conditions Of Confinement At The Erie County Holding Center On July 15, 2010.***"

281. Defendant County knew or should have known of the conditions at the Holding Center.

282. Defendant County knew or should have known of the callousness of the corrections officers.

283. Because Defendant County was aware or should have been aware of same, said Defendant's conduct rises at least to the level of deliberate indifference, if not deliberate intent to punish.

284. Such deliberate indifference (or deliberate malice) constitutes a policy or custom actionable under a 42 U.S.C. §1983 claim.

285. Plaintiff was deprived of her Fourteenth Amendment right to substantive Due Process.

286. Defendant County subjected Plaintiff to numerous conditions of confinement which separately and in confluence amounted to punishment without the benefit of Due Process of law.

**THIRTEENTH CLAIM FOR RELIEF:
JANUARY 13, 2010 WARRANTLESS SEARCH
BY DEFENDANTS STYBORSKI (INDIVIDUALLY),
KANDEFER (INDIVIDUALLY), SPCA,
JOHN DOE #1 (INDIVIDUALLY)
AND JOHN DOE #2 (INDIVIDUALLY)
IN VIOLATION OF THE FOURTH AMENDMENT**

287. The Fourth Amendment to the United States Constitution, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

288. 42 U.S.C. §1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

289. The January 13, 2010 search of Plaintiffs' residence conducted by Defendants Styborski (individually), Kandefer (individually), SPCA, John Doe #1 (individually) and John Doe #2 (individually) was warrantless, unreasonable and in violation of all Plaintiffs' Fourth Amendment rights.

JURY DEMAND

290. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs do hereby demand a jury trial in this action.

PRAYER FOR RELIEF

WHEREFORE the Plaintiffs respectfully request that the Court issue judgment for Plaintiff as follows:

A. Enjoining Defendants and their respective officers, successors, assigns, employees and all persons in active concert or participation with them, from engaging in any warrantless searches and seizures of Plaintiffs' residence, residential real property, and animals;

B. Declaring the policies, practices and customs of Defendants Robinson and SPCA, whereby persons including Plaintiffs are denied title and possession of their animals without notice and hearing, to be violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

C. Awarding compensatory and punitive damages, and damages for emotional distress, to the extent permitted by law, including but not limited to, the Civil Rights Act of 1991, in an amount of not less than One Million Dollars;

D. Awarding Plaintiffs reasonable attorney fees, expert fees, and other costs of this action, pursuant to 42 U.S.C. §1988; and

E. Awarding such other and further relief as is appropriate and equitable.

DATED: March 28, 2012

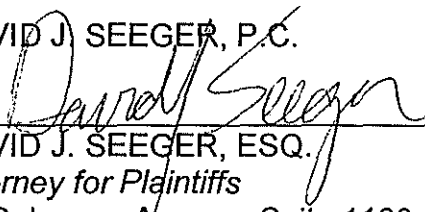
By: 
DAVID J. SEEGER, ESQ.
Attorney for Plaintiffs
69 Delaware Avenue, Suite 1100
Buffalo, New York 14202
716-856-1536
davidjseegerpc@gmail.com

EXHIBIT A

NYS DEPARTMENT OF AGRICULTURE AND MARKETS
DIVISION OF ANIMAL INDUSTRY (DOG LICENSING UNIT) - 10 B AIRLINE DRIVE, ALBANY, NY 12235

DOG SEIZURE AND DISPOSITION REPORT

DCO/SHELTER CONTROL DOG NO. _____

1. CITY/TOWN/VILLAGE: _____ COUNTY: _____, NY.
Description of Dog Seized: License Tag No. _____ Breed _____
Sex _____ Color _____ Age _____ Owner of Record and Address _____
Date of Seizure _____ Time of Seizure _____ Location of Seizure _____
Reason for Seizure _____ No. of Impoundments past 12 mos. (Include this one) _____

2. DISPOSITION INSTRUCTIONS IF DOG NOT REDEEMED

- ☐ A. At expiration of redemption period, above described dog is to be available for adoption. If not adopted by _____ 20 _____, the dog shall be humanely euthanized.
- ☐ B. At expiration of redemption period the above described dog is to be humanely euthanized.

3. Signature of DCO or Seizing Officer _____

4. I hereby acknowledge receipt of the above described dog. _____
Signature & Title of Receiving Agent (shelter)

5. ☒ **REDEMPTION** - IMPOUNDMENT FEES MUST BE COLLECTED AND DOG MUST HAVE VALID LICENSE BEFORE BEING RETURNED TO OWNER.

Impoundment fees are due for _____ days. Impoundment fees have been received by me in the amount of \$ _____.
I hereby certify that this dog has been licensed, license tag no. _____ pursuant to the provisions of Article 7 of the Agriculture and Markets Law. In the case of a dog owned by a resident of New York City or non-resident of New York State, I hereby certify that the dog is validly licensed pursuant to the licensing requirements of the area of owner's residence, license no. _____.
Dated _____ Signature & title of DCO/Clerk _____

5A. I acknowledge receipt of above described dog: Date _____ Sig. of owner _____

6. ☐ **ADOPTION** - ALL DOGS MUST BE LICENSED PRIOR TO RELEASE.

Adoption fees have been received by me in the amount of \$ _____ and all local adoption conditions have been complied with. I hereby certify that the dog has been licensed, license tag no. _____, pursuant to the provisions of Article 7 of the Agriculture and Markets Law.

6A. Dated _____ Signature & Title of DCO/Clerk _____

Adoption Release, Waiver and Disclosure

I hereby accept possession and title of the dog identified above to be harbored as a pet at my own risk, and hereby release and waive any right against the (municipality) _____ which I may have now or, in the future for any damages to person or property caused by said dog. No claims or representations as to the behavior or temperament of adopted animals are made by the municipality.

6B. Dated _____ Signature & Address of Adopter _____

Signature of Witness _____

7. ☐ **EUTHANASIA** - Date of Euthanasia _____ Method of Euthanasia _____

Signature of person performing euthanasia _____



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

April 20, 2012

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 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: *Ball, Bryan v. County of Erie,
Poloncarz, Mark, County Executive,
Greenan, John W., Commissioner of
Personnel, Erie County, Dobies, Joseph
P., Personnel Supervisor, Erie County
Department of Social Services*

Document Received: Verified Petition

Name of Claimant: Bryan Ball
204 West Tupper Street
Buffalo, New York 14201

Claimant's attorney: Diane M Roberts, Esq.
Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 100
Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____

Michelle M. Parker
First Assistant County Attorney

MMP/dld
Enc.

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

BRYAN BALL
204 West Tupper Street
Buffalo, New York 14201

Petitioner,

For an Order and Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

Against

THE COUNTY OF ERIE, MARK POLONCARZ,
County Executive, **JOHN W. GREENAN,**
Commissioner of Personnel, Erie County, **JOSEPH P.**
DOBIES, Personnel Supervisor, Erie County
Department of Social Services,
95 Franklin Street
Buffalo, New York 14202

Respondents.

from Bryan Allen
the 18 day of April, 2012
at 12 a.m./p.m.

[Signature]
Assistant County Attorney

NOTICE OF PETITION

**ORAL ARGUMENT
REQUESTED**

Index No. I-2012-001311

PAID
CHECK CASH

APR 17 2012

**ERIE COUNTY
CLERK'S OFFICE**

FILED
04/17/2012 16:33:00
ERIE COUNTY CLERK
RCPT # 12060703
I 2012001311

PLEASE TAKE NOTICE that upon the annexed Verified Petition of Bryan Ball, dated the 17th of April, 2012, together with all attachments and exhibits thereto, an application will be made before the Court at a special term to be held at the Erie County Courthouse located at 25 Delaware Avenue, Buffalo, New York 14202, on the 22nd day of May, 2012 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, for a Judgment and Order pursuant to CPLR Article 78 compelling the Respondents County of Erie, Mark Poloncarz, County Executive, John W. Greenan, Commissioner of Personnel, Erie County, and Joseph P. Dobies, Personnel Supervisor, Erie County Department of Social Services to comply with Civil Service Rules and Law; rescinding the actions taken, upon information and belief, on or about November 19, 2010 to change Petitioner's civil service status as a Social Welfare Examiner from


"Permanent" to "Temporary" for the period May 10, 2010 through November 18, 2010; correcting Petitioner's seniority date to May 10, 2010; and granting the Petitioner such other and further relief as this Court may deem just and proper, including but not limited to costs and attorneys' fees.

PLEASE TAKE FURTHER NOTICE that a Verified Answer and Supporting Affidavit(s) if any, are to be served at least five (5) days before the time at which the Verified Petition herein is noticed to be heard.

Erie County is designated as the proper venue based upon the residency of the Petitioner and as the parties conduct their normal business relationships in that County.

Dated: April 17, 2012
Buffalo, New York

LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Petitioner

By: 
Diane M. Perri Roberts, Esq.
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
Telephone: 716-849-1333 ext. 465

TO: Michael Siragusa, County Attorney
Erie County Attorney's Office
95 Franklin, 16th Floor
Buffalo, New York 14202

The County of Erie and
Mark Poloncarz, County Executive
95 Franklin Street
Buffalo, New York 14202

John W. Greenan, Commissioner of Personnel, Erie County
95 Franklin Street
Buffalo, New York 14202

Joseph P. Dobies, Personnel Supervisor, Erie County
95 Franklin Street
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

BRYAN BALL

204 West Tupper Street
Buffalo, New York 14201

Petitioner,

For an Order and Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

Against

THE COUNTY OF ERIE, MARK POLONCARZ,
County Executive, JOHN W. GREENAN,
Commissioner of Personnel, Erie County, JOSEPH P.
DOBIES, Personnel Supervisor, Erie County
Department of Social Services,
95 Franklin Street
Buffalo, New York 14202

Respondents.

VERIFIED PETITION

Index No. I-2012-001311

The Petitioner, Bryan Ball, by his attorneys Lipsitz Green Scime Cambria LLP, Diane M. Perri Roberts, Esq., of Counsel, as and for his Verified Petition alleges as follows:

1. At all times hereinafter mentioned, the Petitioner resided at the above referenced address and was an employee of the County of Erie, in the County of Erie, State of New York.
2. At all times hereinafter mentioned, the Respondent County of Erie ("County") was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York and its charter, having its principal offices in the County of Erie and State of New York, and the Respondent Mark Poloncarz is the duly elected County

Executive for the County of Erie, ultimately responsible for all operational aspects of Erie County government including personnel issues.

3. At all times hereinafter mentioned, the Respondent John W. Greenan ("Greenan") was and is the duly appointed Commissioner of Personnel for the County of Erie, and is responsible for all operational aspects of the Erie County Personnel Office, including, upon information and belief, issues arising out of or associated with the New York Civil Service Law.

4. At all times hereinafter mentioned, the Respondent Joseph P. Dobies ("Dobies") was and is the duly appointed Personnel Supervisor for the County of Erie Department of Social Services, and is responsible for all personnel decisions and functions of the Erie County Department of Social Services, including, upon information and belief, either on his own or in conjunction with Greenan, issues arising out of or associated with the New York Civil Service Law.

5. The Petitioner is currently a Social Welfare Examiner for the County.

6. Petitioner started as a Regular Part Time ("RPT") Social Welfare Examiner (SWE) on May 10, 2010, with a civil service status of contingent – permanent, subject to a probationary period of 12 to 52 weeks (See **Exhibit A**).

7. On October 22, 2010, Petitioner was advised in writing that his RPT-SWE status was changed from contingent – permanent to permanent as of October 11, 2010, with probation continuing as per the appointment letter. (See **Exhibit B**).

8. On November 5, 2010, Petitioner was advised that he would complete the "Step 0," twenty-six weeks of service on November 10, 2010, and his pay would go to Step 1. (See **Exhibit C**).

9. On March 24, 2011, Petitioner was advised that as of March 28, 2011, he would complete the SWE probationary term. (See **Exhibit D**).

10. Petitioner received no other communications from the County during the period May 10, 2010 to March 28, 2011 concerning his civil service status.

11. On December 22, 2011, Petitioner was notified he would be laid-off, displaced by a more senior worker. The lay-off was to be effective December 30, 2011.

12. During the course of grieving the later-rescinded layoff, the County on January 12, 2012, for the first time, and contrary to the documents it previously sent to Petitioner, indicated that because Petitioner had not submitted transcripts when hired, the County considered the period from May 10, 2010 to November 18, 2010 to be a “temporary appointment” and classified Petitioner as permanent probationary starting only as of November 18, 2010. (See **Exhibit E**).

13. The County’s actions, which upon information and belief occurred on or about November 19, 2010, to retroactively change Petitioner’s civil service status, were unknown to Petitioner or his union, CSEA, until the County responded in mid-January 2012 to the grievance filed by Petitioner concerning the then-planned lay-off. That was the first time the County in any way communicated to Petitioner that the County had retroactively changed his status to “temporary” and pushed forward his seniority date by over six months.

14. The County’s actions were wrong in part because Petitioner’s appointment was not a temporary appointment and in any event, would not have qualified as a “temporary” appointment under Civil Service Law §64.1. The appointment was first made on a contingent – permanent basis, then changed to permanent, according to the two letters sent out by Personnel. (**Exhibits A and B**).

15. There also was no indication that the May 2010 appointment was because of a leave of absence of the permanent incumbent, which is a sign that the appointment was temporary, or because the position was expected to continue for *not more than* six months; those bases are the permitted, statutory grounds for a “temporary” appointment.

16. The County appointed Petitioner as contingent-permanent as of May 10, 2010, then changed that status to permanent as of October 11, 2010. Upon information and belief, on or about November 19, 2010, the County, unilaterally and without notice to Petitioner, took away both the prior contingent-permanent and permanent statuses, and attempted to retroactively make the appointment “temporary.”

17. Never did the County advise Petitioner his status was changed to “temporary” status, a status which, for this Petitioner, would not even comport with Civil Service Law §64.1.

18. Upon information and belief, the Respondents’ actions on or about November 19, 2010 in improperly and illegally stripping Petitioner’s permanent status in the SWE position, were without legal foundation or basis, and were done without any due process to Petitioner.

19. Under Civil Service Law §80, seniority is based upon continuous service, which this Petitioner has back to May 10, 2010.

20. Because of the improper and illegal actions by Respondents, Petitioner’s seniority date as currently reflected on the County’s personnel records, is more than six (6) months less than it should be. In the event of future lay-offs, that incorrect seniority date could lead to an improper lay-off of Petitioner, among other possible consequences such as potential vesting date in the New York State retirement system.

21. Further, the Erie County “Rules for the Classified Civil Service”, issued by Respondent Greenan and approved by the New York State Civil Service Commission (9/28/08 version, relevant sections attached as **Exhibit F**), specify at Rule XV (4)(a)(4) that seniority in a title goes by the date of contingent appointment *after* the appointment matures into a permanent one. The appointment letters issued by the County Personnel Office verify that Petitioner’s appointment went from being contingent-permanent to permanent (see **Exhibits A and B**). Therefore, Petitioner’s seniority date should, under Respondents’ own rules, be the May 10, 2010 date of his contingent-permanent appointment.

22. Regardless of how this situation is assessed, the Respondents’ improperly and illegally ignored and failed to follow the New York, as well as the County, Civil Service Laws and Rules, by stripping Petitioner of over six months of seniority he accrued through his contingent-permanent appointment, which then matured into a permanent appointment, without giving him any notice or granting him any due process.

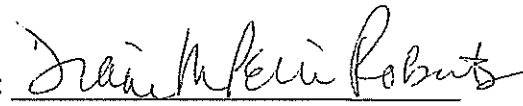
WHEREFORE, Petitioner prays that this Court will enter a Judgment and Order pursuant to Article 78 of the Civil Practice Law and Rules: (a) compelling the Respondents County of Erie, Greenan and Dobies to comply with New York Civil Service Law and the Erie County Civil Service Rules; (b) returning/restoring Petitioner’s seniority date to May 10, 2010; (c) restoring all salary, retirement, sick leave, vacation leave and any other differentials to Petitioner which were, or may have been, adversely calculated, negated, removed or otherwise affected by

the Respondents' actions; and (d) granting Petitioner such other and further relief as this Court may deem just and proper, including but not limited to costs and attorneys' fees.

Dated: April 17, 2012
Buffalo, New York


BRYAN BALL

LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Petitioner

By: 
Diane M. Perri Roberts, Esq.
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
Telephone: 716-849-1333 ext. 465

TO: Michael Siragusa, County Attorney
Erie County Attorney's Office
95 Franklin, 16th Floor
Buffalo, New York 14202

The County of Erie and
Mark Poloncarz, County Executive
95 Franklin Street
Buffalo, New York 14202


John W. Greenan, Commissioner of Personnel, Erie County
95 Franklin Street
Buffalo, New York 14202

Joseph P. Dobies, Personnel Supervisor, Erie County
95 Franklin Street
Buffalo, New York 14202

VERIFICATION

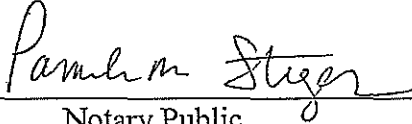
STATE OF NEW YORK)
)SS:
COUNTY OF ERIE)

Bryan Ball, being duly sworn, deposes and says that he is the Petitioner in the within action and that he has read the foregoing Verified Petition and knows the contents thereof, that the same is true to Deponent's knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters Deponent believes them to be true.



BRYAN BALL

Subscribed and sworn to before me
this 17th day of April, 2012



Notary Public

PAMELA M. STEGER
Notary Public, State of New York
Qualified in Erie County
Commission Expires Nov. 13, 20 14

100% Recycled 30% PCW



From:

01/24/2012 15:49 #018 P.002/010

(3)



COUNTY OF ERIE

CHRIS COLLINS

COUNTY EXECUTIVE

May 6, 2010

Mr. Bryan G Ball
204 W. Tupper Street
Buffalo, NY 14201

Dear Mr. Ball:

I am pleased to inform you that as a result of your certification from a Civil Service list of eligibles; you will be appointed to a contingent permanent Social Welfare Examiner-RPT position effective May 10, 2010, at an hourly rate of \$13.703.

In compliance with Appendix F of the Rules for the Classified Civil Service of the County of Erie, this appointment is subject to a probationary period of twelve to fifty-two weeks.

I would like to take this opportunity to welcome you to the Department of Social Services, and wish you success in your new position.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joe Dobies", with a long horizontal line extending to the right.

Joseph P. Dobies, Personnel Supervisor
Erie County Dept. of Social Services

JPD/dml

cc: F. DeCarlo
S. Hughes
K. Kumor, CSEA
✓ Personnel



COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE

November 5, 2010

Mr. Bryan Ball
204 W. Tupper Street
Buffalo, NY 14201

Dear Mr. Ball:

This is to inform you that effective November 10, 2010 you completed the twenty-six weeks of service in step 0 (probationary step). Therefore, your hourly salary will be increased to \$14.576 which is step one.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph P. Dobies".

JOSEPH P. DOBIES, Personnel Supervisor
Erie County Dept. of Social Services

JPD/jak

cc: Personnel

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COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE

March 24, 2011

Mr. Bryan Ball
204 West Tupper Street
Buffalo, NY 14201

Dear Mr. Ball:

I am pleased to inform you that effective March 28, 2011 you have satisfactorily completed the probationary term for a Social Welfare Examiner as outlined in your appointment letter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joe Dobies", followed by a long horizontal line extending to the right.

JOSEPH P. DOBIES, Personnel Supervisor
Erie County Dept. of Social Services

JPD/jak

cc: F. DeCarlo
S. Hughes
P. Milton
Personnel



Erie Unit - Local # 815 CSEA Grievance Form

Grievance Number:

Details of Grievance (including article and section of contract violated):

County is in violation of Collective Bargaining Agreement. Bryan Ball received notice on December 22, 2011 that he was displaced by a more senior employee. Notice was later rescinded but Bryan's seniority date was given as November 18, 2010. Bryan received notice on May 6, 2010 that he was hired by Erie County on May 10, 2010 as a contingent permanent Social Welfare Examiner. Bryan did in fact assume a position with ECDSS on May 10, 2010 and has maintained an uninterrupted period of actual service. Per contractual definition, Bryan's seniority should date from May 10, 2010.

Remedy Sought: Correct error in Bryan's seniority date to 5/10/10 hire date. Make employee whole.

CSEA Representative: Kevin Kurner

Employee's Name: Bryan Ball

Date of Hire: 5/10/10

Address: 204 West Tupper St. Buffalo, NY 14201

Department: DSS

S.S. Number:

Phone (Work):

(Home): 716-541-5557

Title: SWE

Date: 1/11/12

First Step (Department Head Disposition): Issue can not be resolved at this level.

According to County Personnel Grievant did not have transcripts submitted

at time of hiring on May 10, 2010. Transcripts were provided on November 18, 2010

at which time Grievant was made permanent probationary starting seniority.

From May 10, 2010 to November 18, 2010 appointment was temporary.

County Representative: [Signature]

Dept. Soc. Sec.

Date: 1/12/12

CSEA Representative: [Signature]

Dept. _____

Date: _____

Second Step (County Labor Relations Committee Disposition): _____

Third Step - Arbitration Requested By: _____

Date: _____

,

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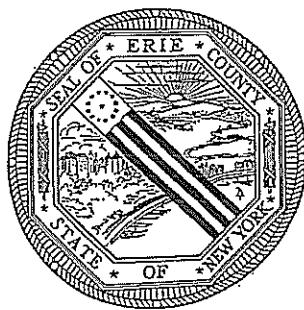
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8



RULES
for the
CLASSIFIED CIVIL SERVICE
of the
COUNTY of ERIE
and the
TOWNS, VILLAGES, SPECIAL DISTRICTS
and SCHOOL DISTRICTS
Within the COUNTY

Issued By:
John W. Greenan
COMMISSIONER of PERSONNEL
COUNTY of ERIE

As Amended and Approved By
STATE CIVIL SERVICE COMMISSION
To
September 29, 2008

RULE XIV-a

TRAINEE APPOINTMENTS

The Personnel Officer may require that permanent appointments to designated positions shall be conditioned upon the satisfactory completion of a term of service as a trainee in a appropriate, lower, training title and, where required, the completion of specified academic courses. The period of such term of training service shall be prescribed by the Personnel Officer. Upon the satisfactory completion of such training term, and of specified academic courses if required, an appointee shall be entitled to full permanent status in the position for which appointment was made. Any appointment hereunder shall be subject to such probationary period as is prescribed in these Rules. Also, the employment of such person may be discontinued at the end of the term of training service if his/her conduct, capacity or fitness is not satisfactory, or at any time during the term of training service if (s)he fails to pursue or continue satisfactorily such academic courses as may be required.

RULE XV

EFFECT OF TEMPORARY OR PROVISIONAL OR CONTINGENT PERMANENT APPOINTMENT ON STATUS OF APPOINTEE

1. Effect of temporary appointment on eligibility for permanent appointment.

The acceptance by an eligible of a temporary appointment shall not affect his/her standing on the eligible list for a permanent appointment, nor shall the period of temporary service be counted as part of the probationary service in the event of subsequent permanent appointment.

2. Provisional appointment of permanent employee.

When a permanent competitive class employee is given a provisional appointment to another competitive class position in the same department or agency, the position thus vacated by him/her shall not be filled on other than a temporary basis pending his/her reinstatement thereto upon failure of his/her provisional appointment to mature into permanent appointment.

3. Successive provisional appointment

(a) No provisional employee who has refused to take an examination held for permanent appointment shall be given another provisional appointment in the same titled position. No provisional employee who fails two examinations for permanent appointment shall be eligible for provisional appointment in the same title under the same appointing authority. For the purpose of this rule, a failure to appear for an appropriate examination shall constitute a refusal to take an appropriate examination.

(b) The term of provisional appointment shall end upon establishment of an appropriate eligible list for the position as prescribed in section sixty five of the Civil Service Law or upon receipt of the results of examination wherein no candidates passed the appropriate examination. The provisional appointee may be authorized another provisional appointment at the discretion of the Personnel Officer if the eligible list contains fewer than three eligibles from which to make a permanent appointment to the position.

4. Contingent Permanent Appointments

(a) A position left temporarily vacant by the leave of absence of the permanent incumbent may be filled, at the discretion of the appointing authority, by a contingent permanent appointment through the use of an open competitive or promotion eligible list. Any person appointed on a contingent permanent basis shall have all the rights and benefits of a permanent competitive class employee, subject to the following limitations:

1. Probationary Period: All appointments under this rule shall be required to complete the probationary period for original appointment or promotion as prescribed in these rules.

2. Return of Incumbents: In the event of layoff or if the permanent incumbent returns from leave of absence, persons holding positions on a contingent permanent basis shall be displaced before any persons holding permanent status in the same title, regardless of total seniority. In the event that more than one position in the same title is held by persons having contingent permanent appointment, displacement among those persons shall be based on the inverse order of their contingent permanent appointments.

3. Preferred List: Upon displacement, if the contingent permanent appointment was made from a promotion eligible list, he/she shall be restored to his/her permanent position and have his/her name placed on a preferred eligible list, for certification as a mandatory list only to the department or agency in which the contingent permanent appointment was made. If the contingent permanent appointee was appointed from an open-competitive eligible list and does not have a permanent position to return to, (s)he shall have his/her name placed on a preferred list for certification as a mandatory list in the civil division in which the contingent permanent appointment was made.

4. Seniority: When a contingent permanent appointment matures into a permanent appointment, the date of permanent service shall be the date of the original contingent permanent appointment.

5. Promotion: When a permanent competitive class employee accepts a contingent permanent appointment, the position vacated by such employee shall not be filled except on a temporary or contingent basis until the contingent permanent appointment matures into a permanent appointment.

(b) All appointments under this rule shall be canvassed as "permanent – contingent permanent". A copy of this rule must be included with the canvass letter.

(c) Appointments to contingent permanent positions shall be made by selection of one of the top three candidates on an appropriate eligible list willing to accept contingent permanent appointment. There will be no recanvassing of the eligible list in the event the contingent permanent position becomes unencumbered. Acceptance of a contingent permanent appointment will remove the person's name from the eligible list for any future contingent permanent or permanent vacancies within the department or agency in which the contingent permanent appointment was made.

(d) If a permanent vacancy becomes available in the same title in the department or agency in which a contingent permanent appointment has been made, the most senior contingent permanent appointee in that title shall immediately gain permanent competitive class status in the class if the required probationary period, as prescribed in this rule, has been satisfactorily completed.



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH

DEPARTMENT OF LAW

SECOND ASSISTANT COUNTY ATTORNEY

April 23, 2012

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 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>Szewczyk, Elizabeth, a Minor, by Peckey, Michele, as p/n/g, and Szewczyk, as p/n/g, v. County of Erie and Town of Collins</i>
Document Received:	Notice of Claim
Name of Claimants:	Michele Peckey 4831 Morgan Parkway Hamburg, New York 14075 Dennis Szewczyk 27 Matthew Lane Cheektowaga, New York 14225
Claimant's attorney:	William D. Murphy, Esq. Maxwell Murphy, LLC 1230 Delaware Avenue Buffalo, New York 14209

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 

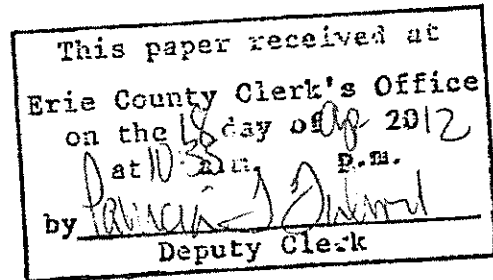
Michelle M. Parker
First Assistant County Attorney
Direct Dial: (716) 858-2209
Email: parkerm3@erie.gov.

MMP/dld

Enclosure

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE



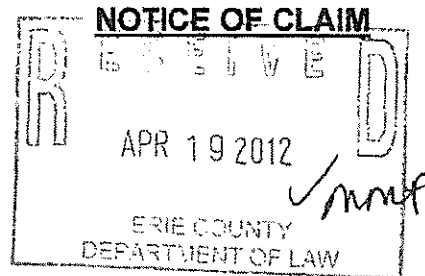
In the Matter of the Claim of
MICHELE PECKEY, Individually and as Parent and
Natural Guardian of ELIZABETH T. SZEWCZYK, a
Minor, and DENNIS SZEWCZYK, Individually
and as Parent and Natural Guardian
of ELIZABETH T. SZEWCZYK, a Minor,

Claimants,

vs.

COUNTY OF ERIE and TOWN OF COLLINS,

Respondents.



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

TOWN OF COLLINS
14093 Mill Street, Box 420
Collins, New York 14034

PLEASE TAKE NOTICE, that in accordance with the requirements of New York General Municipal Law §50-e the Claimants, MICHELE PECKEY, Individually and as Parent and Natural Guardian of ELIZABETH T. SZEWCZYK, a Minor, and DENNIS SZEWCZYK, Individually and as Parent and Natural Guardian of ELIZABETH T. SZEWCZYK, a Minor, claim and demand the following against the Respondents, COUNTY OF ERIE and TOWN OF COLLINS:

1. The names and post office addresses of the Claimants are:

MICHELE PECKEY
4831 Morgan Parkway
Hamburg, New York 14075

DENNIS SZEWCZYK
27 Matthew Lane
Cheektowaga, New York 14225

ELIZABETH T. SZEWCZYK
4831 Morgan Parkway
Hamburg, New York 14075



The name and post office address of the Claimants' attorney is:

WILLIAM D. MURPHY, ESQ.
MAXWELL MURPHY, LLC
1230 Delaware Avenue
Buffalo, New York 14209

2. MICHELE PECKEY and DENNIS SZEWCZYK are the parents and natural guardians of ELIZABETH T. SZEWCZYK, a minor.

3. This claim is for personal injuries and economic loss sustained through the negligence and violations of the Respondents, COUNTY OF ERIE and TOWN OF COLLINS, their employees, agents and servants.

4. The date, time and place where this claim arose are as follows: at approximately 4:30 a.m. on January 28, 2012 on Versailles Plank Road at or near its intersection with Snow Road on the Cattaraugus Indian Reservation, County of Erie and State of New York.

5. ELIZABETH T. SZEWCZYK was a passenger in a motor vehicle which was owned and being operated by Bradley V. Maloney when Mr. Maloney lost control of said vehicle and it left the road, went down an embankment some 50 feet down into a ravine, causing serious personal injuries to Infant Claimant, ELIZABETH T. SZEWCZYK.

6. The accident took place at the above-mentioned location which the Respondents, COUNTY OF ERIE and TOWN OF COLLINS, knew to be dangerous, unsafe and defective but nonetheless failed in their individual duties to study, improve, change, alter, maintain or otherwise make safe. Through the negligence, carelessness, and statutory violations of the Respondents, COUNTY OF ERIE and TOWN OF COLLINS, in maintaining, designing, keeping and constructing the road referenced above, the motor vehicle accident occurred causing serious personal injuries to ELIZABETH T. SZEWCZYK.



7. ELIZABETH T. SZEWCZYK was caused to suffer serious and permanent personal injuries, including but not limited to a traumatic brain injury, coma, dislocations and fractures in her left foot, pain and suffering and economic damages resulting from those injuries as a direct and proximate result of the aforesaid negligence and failures of the Respondents, COUNTY OF ERIE and TOWN OF COLLINS.

8. Claimants MICHELE PECKEY and DENNIS SZEWCZYK have been caused to suffer damages, including but not limited to, economic damages for medical expenses and loss of wages as they were required to take time off from work to care for their daughter, mental anguish, out-of-pocket expenses and loss of society and companionship of their daughter as a direct and proximate result of the aforesaid negligence and failures of the Respondents, COUNTY OF ERIE and TOWN OF COLLINS.

WHEREFORE, the Claimants, MICHELE PECKEY, Individually and as Parent and Natural Guardian of ELIZABETH T. SZEWCZYK, a Minor, and DENNIS SZEWCZYK, Individually and as Parent and Natural Guardian of ELIZABETH T. SZEWCZYK, a Minor, hereby claim and demand from Respondents, COUNTY OF ERIE and TOWN OF COLLINS, compensation for the damages sustained by reason of the wrongful, unlawful, negligent and careless acts and omissions of the Respondents, COUNTY OF ERIE and TOWN OF COLLINS, their agents, servants and employees.

DATED: April ____, 2012
Buffalo, New York


WILLIAM D. MURPHY, ESQ.
MAXWELL MURPHY, LLC

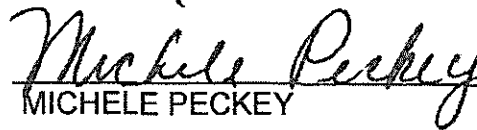
*On Behalf of Claimants – MICHELE PECKEY, Individually
and as Parent & Natural Guardian of ELIZABETH T.
SZEWCZYK and DENNIS SZEWCZYK, Individually and as
Parent & Natural Guardian of ELIZABETH T. SZEWCZYK*
1230 Delaware Avenue
Buffalo, New York 14209
(716) 885-1300



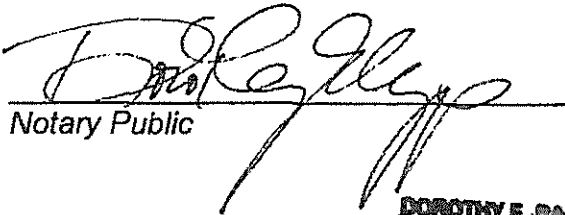
VERIFICATION

MICHELE PECKEY, being duly sworn, deposes and says:

I am the Claimant above named; I have read the foregoing Notice of Claim and know its contents; the same is true to my own knowledge, except as to those matters therein stated to be alleged on information and belief, and, as to those matters, I believe it to be true.


MICHELE PECKEY

Subscribed and sworn to before me
this 16th day of April 2012.


Notary Public

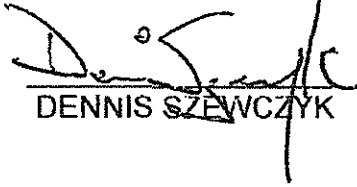
DOROTHY E. RAPP
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 08/20/2013



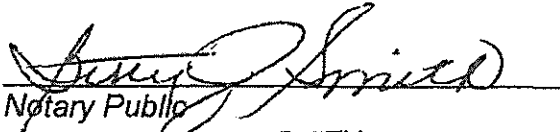
VERIFICATION

DENNIS SZEWCZYK, being duly sworn, deposes and says:

I am the Claimant above named; I have read the foregoing Notice of Claim and know its contents; the same is true to my own knowledge, except as to those matters therein stated to be alleged on information and belief, and, as to those matters, I believe it to be true.


DENNIS SZEWCZYK

Subscribed and sworn to before me
this 13 day of April 2012.


Notary Public

BETTY J SMITH
No. 01SM6023963
Notary Public, State of New York
Qualified in Erie County
My Commission Expires May 3, 2015





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

April 26, 2012

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 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>Anderson, Derrick v. RN Serena, Sheriff Timothy B. Howard, County Executive Chris Collins, RN Joe Wertman, and RN Duane</i>
Document Received:	Summons and Complaint
Name of Claimant:	Derrick Anderson ICN 149 c/o Erie County Holding Center 40 Delaware Avenue Buffalo, New York 14202
Claimant's attorney:	Pro Se

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle Parker

MMP/dld
Enc.

cc: Michael A. Siragusa, Erie County Attorney

APR 16 2012

UNITED STATES DISTRICT COURT

for the

Western District of New York

DERRICK ANDERSON

Plaintiff

v.

B.N. SEVEN

Defendant

Civil Action No.

12 CV 6039

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

40 Delaware Ave
Buffalo NY 14202

RECEIVED
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF
NEW YORK
2012 APR -5 AM 10:07

A lawsuit has been filed against you.

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

Derrick Anderson #149
Erie County Holding Center
40 Delaware Avenue
Buffalo, NY 14202

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

APR 4 2012

Date: _____

CLERK OF COURT

Michael J. Roemer

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

DEANRICK ANDERSON

Plaintiff,

Amended Complaint

vs. Defendant

BN SERENIA

: 12-44-6039 FE

BN JOE MERTMAN

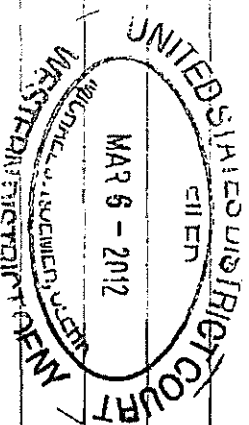
BN DUANE

SHERIFF HOWARD

ALLS COLLINS, individually

and in their official capacities:

Defendants.



Plaintiff's First Amended Complaint

Plaintiff Deanrick Anderson, pro se, for his first amended complaint against defendants BN SERENIA, BN JOE MERTMAN, BN DUANE, SHERIFF HOWARD, and COURT EXECUTIVE ALLS COLLINS, alleges as follows:

Jurisdiction And Venue

1. This court has jurisdiction over this action

under 28 U.S.C. Sections 1331 and 1343 (3) and (4).

22-04

THE MATTERS IN CONTROVERSY ARISE UNDER 42 U.S.C. SECTION 1983.

2. Venue properly lies in this District pursuant to 28 U.S.C. Section 139 (b)(2), because the events giving rise to this cause of action occurred at the Erie County Holding Center, in the City of Buffalo, State of New York, which is located within the Western District of State.

PARTIES

3. Plaintiff Dennis Anderson is and was, at all times relevant hereto, a prisoner in the custody of the Erie County Sheriff's Department. At the time of the events relevant hereto, Anderson was incarcerated at the Erie County Holding Center. Anderson is currently incarcerated at the Erie County Holding Center.

4. Defendant RN Sereno is a registered nurse, who at all times relevant hereto, was assigned to the Erie County Holding Center.

5. RN Joe Vertman (defendant) is a registered nurse, who at all times relevant hereto, was assigned to the Erie County Holding Center.

6. Defendant RN Dume is a registered nurse, who at all times relevant hereto, was assigned to the Erie County Holding Center.

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7. Defendant Howard is a sheriff, who at all times relevant hereto, was assigned to the Erie County holding center.

8. Defendant Chris Collins was the County Executive, who at all times relevant hereto, was assigned to the Erie County holding center.

FACTS

9. On 2/17/11, during evening med run, defendant RN. SEVENS exercised judgement in difference by failing to provide adequate medical care to Plaintiff Anderson by not giving him his diabetes Hekt, stroke and cholesterol medications, and by failing and refusing Plaintiff Anderson's medical needs to make them happen that she did. RN SEVENS intentionally did not administer his medications to him, and she intentionally edited, and falsified his medical chart to make it appear she did. As a result of RN SEVENS's deliberate indifference to Plaintiff Anderson diabetic condition, Plaintiff suffered further pain and mental anguish, he continued to suffer from myalgia headaches, and diabetic nerve pain in his hands, and feet, after RN. SEVENS intentionally did not administer his medications to him, his request for emergency sick call was denied, Plaintiff Anderson returned to his cell with no

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MEDICATION OR TREATMENT. PLAINTIFF WAS IN SEVERE PAIN IN HIS HANDS, WRISTS, AND FEET, EYES, AND EARS. IN SEVERAL ~~UNPROFESSIONAL~~ DELIBERATE DIFFERENCE TO HIS MEDICAL NEEDS WHO UNPROFESSIONAL, AND INAPPROPRIATE. PLAINTIFFS INJURED, KILLED FROM 2/1/11 THROUGH 3/20/11. THESE INJURIES WERE SEVERE, DUE TO THE FACT THAT PLAINTIFF WAS DENIED PROMPT MEDICAL CARE BY THE JAIL. WHEN PLAINTIFF WAS FINALLY TAKEN TO THE JAIL INFIRMARY ON 3/20/11, HE WAS DIAGNOSED AS SUFFERING FROM CLUSTER MIGRAINE HEADACHES, RESULTING FROM HIS DIABETIC COMPLICATION. DEFENDANT RN. SERENT, NOR PRISON AUTHORITIES DID NOT PROVIDE PLAINTIFF WITH TREATMENT OR MEDICATION UNTIL 2/23/11. PLAINTIFF SUFFERED SEVERE MIGRAINE HEADACHES RESULTING FROM STRESS, AND MENTAL ANGUISH. DEFENDANTS SHOWED DELIBERATE INDIFFERENCE TO THE MEDICAL NEEDS OF PLAINTIFF ANDERSON. MEDICAL CARE AT THE EARLE COUNTY HOLDING CENTER IS INADEQUATE AND UNPROFESSIONAL. MEDICAL RECORDS, VITAL IN ASSESSING A PATIENT'S POTENTIAL FOR FUTURE SICKNESS, WERE NOT USED TO ASSIST PLAINTIFF ANDERSON DIAGNOSES. DEFICIENCIES ARE THE NORM, AND PLAINTIFF WAS UNABLE TO OBTAIN EXAMINATIONS OR CARE UPON REQUEST. PLAINTIFF HAD TO OFTEN SUBMIT GRUANCES TO RECEIVE MEDICAL CARE FROM A PHYSICIAN AT HOSPITAL. SICK CALL OCCURS ONCE A MONTH, THE SCREENING PROCESS FOR DETERMINING WHETHER A PATIENT NEEDED ATTENTION WAS INADEQUATE, AND IN

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The interim, Plaintiff would have to beg deputies or other staff for serious medical attention.

10 ON 3/11/11, at approximately 10:45 AM, RN JOE WERTMAN, EXERCISED DELIBERATE INDIFFERENCE TO MY MEDICAL NEEDS BY COMING TO MY UNIT, (C-SEG), WITHOUT MY DIABETES MEDICATION, (METEORMIN), HEARD SIBBLE, BLOOD PRESSURE, AND CHOLESTEROL MEDICATIONS. HE DEMANDS NEXT CODE AND UNPROFESSIONAL. HE STATED "I DON'T HAVE YOUR MEDICATIONS, AND I'M NOT GOING TO GET THEM". HE WAS VERY VIOLENT ABOVE TO PLAINTIFF. HE REBUKED AGAINST ME FOR FILING LEGISLATIVE GRIEVANCES AGAINST OTHER NURSES, AND THEIR INADEQUATE MEDICAL DEFICITMENT. RN JOE WERTMAN EXERCISED DELIBERATE INDIFFERENCE, AND INTENTIONALLY FAILED TO USE SKILL, CARE, AND REASONING THAT A COMPETENT NURSE WOULD EMPLOY IN DELIVERING MEDICATIONS AND DEALING WITH PATIENTS. RN JOE WERTMAN EXERCISED DELIBERATE INDIFFERENCE, AND INTENTIONALLY FAILED TO USE COMMENDABLE SPEED OR SKILL IN DELIVERING PLAINTIFF CHRONIC ILLNESS MEDICATIONS TO HIM. INSTEAD OF NURSE JOE WERTMAN STEERING UP AND TAKING RESPONSIBILITY, AND TRYING TO REMEDY THE PROBLEM, FOR HIS OWN INTEREST, AND CONVENIENCE, HE DEMANDS UNPROFESSIONAL, AND VIOLENT ABOVE TO ME. NURSE JOE WERTMAN, FAILED TO SIGN THE CHARGE SEG LOG BOOK BEFORE HE ATTEMPTED TO PASS OUT MEDICATIONS HE DID NOT

DAVE ON THE MEDICATION THAT. THEREFORE, IT WAS NO NEED FOR HIM TO BE ON UNLAWFUL SEG BEING UNPROFESSIONAL, AND VERBALLY ABUSE TO PLAINTIFF. RN JOE WERTMAN BROUGHT THE WRONG MEDICINE TRY TO USEG, THEN STATED A ARGUMENT WITH ME, THEN WRITE A FALSIFIED MISBEHAVIOR REPORT ON ME THAT SAY ME AS DRUG KEEPER. AS A RESULT OF RN JOE WERTMAN DELIBERATE INDIFFERENCE TO PLAINTIFF ANDERSON Diabetic condition, plaintiff suffered further pain and mental anguish. HE CONTINUED TO SUFFER FROM MIGRAINE HEADACHES, AND DIABETIC NERVE PAIN IN HIS HANDS, AND FEET. AFTER RN JOE WERTMAN INTENTIONALLY DID NOT ADMINISTER HIS MEDICATIONS TO HIM, AND WHO UNPROFESSIONAL, AND VERBALLY ABUSE TO PLAINTIFF, PLAINTIFF REQUEST FOR EMERGENCY SICK-CALL WAS DENIED. PLAINTIFF RETURNED TO HIS CELL WITH NO MEDICATION OR TREATMENT. PLAINTIFF WAS IN SEVERE PAIN IN HIS HEAD, HANDS AND FEET, EYES, AND EARS. RN JOE WERTMAN DELIBERATE INDIFFERENCE TO MY MEDICAL NEEDS WHO UNPROFESSIONAL, AND INAPPROPRIATE. PLAINTIFF INJURIES LASTED FROM 3/11/11 THROUGH 3/24/11. THESE INJURIES WERE SEVERE, DUE TO THE FACT THAT PLAINTIFF WAS DENIED PROMPT MEDICAL CARE BY THE JAIL. WHEN PLAINTIFF WAS FINALLY TAKEN TO THE JAIL INFIRMARY ON 3/24/11, HE WAS DIAGNOSED AS SUFFERING FROM CHRONIC MIGRAINE HEADACHES, RESULTING FROM HIS DIABETIC CONDITION. RN JOE WERTMAN, NOR JAIL'S ADMINISTRATION DID NOT PROVIDE

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Plaintiff with treatment or medication until 3/20/11. Plaintiff suffered severe negative medical consequences resulting from stress and mental anguish. Defendants showed deliberate indifference to the medical needs of Plaintiff Anderson. Medical care at the Erie County Holding Center is inadequate, and unprofessional. Medical Records, vital in testing a patient's potential for future sickness, were not used to assist Plaintiff Anderson diagnoses. Procedures are the norm, and Plaintiff was unable to obtain examinations or care upon request. Plaintiff had to often submit grievances to receive medical care from a physician or hospital. Sick call occurs once a month, the screening process for determining whether a patient needed attention was inadequate, and in the interim, Plaintiff would have to beg deputies or other staff for serious medical attention.

11. On ~~Friday~~ April 15, 2011, at approximately 2:15 pm, Mr. Dwyne exercised deliberate indifference to Mr. Seidors medical needs by intentionally failing to identify himself by giving his name tag inside his shirt. He failed to sign the "Christie" logbook before passing out medications. Mr. Dwyne exercised deliberate indifference to Mr. Medical needs by leaving it 2:15 with some of Mr. Morning

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 MEDICATIONS, AND NONE OF MY AFTERNOON MEDICATIONS. HE INTENTIONALLY DIDN'T HAVE THE MEDICATION CHART WITH HIM, NOR DID HE HAVE MY MEDICAL CHART WITH HIM, WHICH HE SHOULD HAVE, SO HE COULD HAVE MARKED THE CHART AS HE PASSED OUT MY MEDICATIONS. SO HE WOULDN'T HAVE MADE A MISTAKE, WHICH HE DID, BY CAUSING ME TO TAKE SOME OF MY MEDICATIONS TWICE. AN DUANE EXERCISED DELIBERATE INDIFFERENCE TO MY MEDICAL NEEDS, BY INTENTIONALLY TALKING FROM 9:00AM TO 2:15 PM TO LOCK ME TO PASS OUT MEDICATIONS HE DIDN'T EVEN HAVE. AS A RESULT OF AN DUANE DELIBERATE INDIFFERENCE TO PLAINTIFF ANDERSON DIABETIC CONDITION, PLAINTIFF SUFFERED FURTHER PAIN, AND MENTAL ANGUISH. HE CONTINUED TO SUFFER FROM MIGRAINE HEADACHES, AND DIABETIC NERVE PAIN IN HIS HANDS, AND FEET. HIGH BLOOD SUGAR, LOWER BACK PAIN ASSOCIATED WITH PREMEDITATED DULGING DISCS, CHAOS & PAIN. AFTER AN DUANE INTENTIONALLY DID NOT ADMINISTER PLAINTIFF MEDICATIONS TO HIM, AND WAS UNPROFESSIONAL BY HIDING HIS NAME TAG, PLAINTIFF REQUEST FOR EMERGENCY SUCH WILL WAS DENIED. PLAINTIFF RETURNED TO HIS CELL WITH NO MEDICATION OR MEDICATIONS. PLAINTIFF WAS IN SEVERE PAIN IN HIS NECK, HANDS, FEET, EYES, EARS, AND CHAOS. AN DUANE DELIBERATE INDIFFERENCE TO MY MEDICAL NEEDS WAS UNPROFESSIONAL, AND INAPPROPRIATE. PLAINTIFF INJURED HISSELF FROM 2/11/11 THROUGH 5/15/11. THESE INJURIES

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WERE SEVERE, due to the fact that Plaintiff was denied prompt medical care by the jail. When Plaintiff was finally taken to the jail infirmary on 4/23/11, he was again diagnosed as suffering from Cluster Migraine headaches, resulting from his diabetic condition. RN DUANE, nor prison authorities did not provide Plaintiff with treatment or medication until 4/23/11. Plaintiff suffered SEVERE Migraine headaches resulting from stress, and mental anguish. Defendants showed deliberate to the medical needs of Plaintiff ANDERSON. RN DUANE exercised deliberate indifference when he intentionally denied Plaintiff his medications, lied, and said he was coming back, then said he was going home, and intentionally denied Plaintiff medical treatment. RN DUANE displayed negligence, and recklessness. RN DUANE edited, and falsified my medical charts before he went home on 4/23/11, to make them look as if he gave me my medications. RN Crystal had to come give me the rest of my medications, some medications twice, because she wasn't sure what medications RN DUANE gave me. RN DUANE exercised deliberate indifference to my medical needs of intentionally not meeting his moral, medical or legal responsibilities in this matter. He did not stop, and take responsibility, and get medical charts to make sure he was passing out the

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right medications. The "intentionally continued to attempt to pass out medications that he could not even identify like a qualified nurse with credentials would be able to do with ease. He continued to exercise deliberate indifference by passing out medications on a whim. This was RN Dubue's first day on the job. It took him 5 hours to locate me. When he finally located me, he gave me the wrong medications. He should not have been sent out to pass out medications by himself on his first day on the job, not knowing the layout of the job. His creation of dangerous situation, truly created an unsafe, and hazardous environment. Medical care at the Erie County Holding Center is inadequate, and unprofessional. Medical records, vital in assessing a patient's potential for future sickness, were not used to assist plaintiff anderson diagnoses. Deficiencies are the norm, and plaintiff was unable to obtain examinations or care upon request. Plaintiff had to often submit grievances to receive medical care from a physician or hospital. Sick call occurs once a month, the screening process for determining whether a patient needed attention was inadequate, and in the interim, plaintiff would have to beg relatives or other staff for serious medical attention.

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Do From 2/1/11 through 12/31/11, Chris Collins, County Executive for these periods was personally involved in the enclosed constitutional deprivations due to the facts that he (A) failed to remedy a continuing or egregious wrong after learning of violations, (B) created a policy or custom under which the unconstitutional practices occurred or allowed such policy or custom to continue, or (C) was "grossly negligent" in managing subordinates who actually caused the constitutional deprivations, set such a new standard which caused deliberate indifference to my medical needs by intentionally hiring unqualified nurses at the Erie County Hospital Center, while passing over those nurses with years of experience, and proper certification. These unqualified nurses are afraid to be fired because they are afraid to be sued for medical negligence and malpractice due to major mistakes and gaining plaintiff burden at risk of serious injury or death. Plaintiff deserves more qualified nurses, and more openness about hiring policies. Chris Collins system, nor the unqualified nurses have not performing up to the standards plaintiff should expect. The nurses that come from outside agencies to work at the Erie County Hospital Center are not qualified, and their credentials are questionable. These nurses are receiving on the job

TRAINING, AND MIXING THE AMOUNT OF MONEY THAT REQUIRES QUALIFIED NURSES SHOULD MAKE. THESE UNQUALIFIED NURSES DO NOT RECEIVE MEDICAL BENEFITS FROM CHRIS COLLINS OFFICE. THIS ENABLES CHRIS COLLINS TO HIRE UNQUALIFIED NURSES FROM THE OUTSIDE AGENCY'S AT A LOWER RATE, WHICH PUT PLAINTIFF AT RISK. AS A RESULT OF CHRIS COLLINS DELIBERATE INDIFFERENCE TO PLAINTIFF ANDERSON DIABETIC CONDITION, PLAINTIFF SUFFERED FURTHER PAIN, AND MENTAL ANGUISH. HE CONTINUED TO SUFFER FROM MIGRAINE HEADACHES, AND DIABETIC NERVE PAIN IN HIS HANDS, FEET. HIGH BLOOD SUGARS, LOWER BACK PAIN ASSOCIATED WITH HERNIATED BULGING DISCS, CHEST PAINS. CHRIS COLLINS DELIBERATE INDIFFERENCE TO MY MEDICAL NEEDS WAS UNPROFESSIONAL, AND INAPPROPRIATE. PLAINTIFF INJURIES LASTED FROM 2/11/11 THROUGH 5/15/11.

THESE INJURIES WERE SEVERE, DUE TO THE FACT THAT PLAINTIFF WAS DENIED PROMPT MEDICAL CARE BY THE JAIL. WHEN PLAINTIFF WAS FINALLY TAKEN TO THE JAIL INFIRMARY ON 4/12/11, HE WAS DIAGNOSED AS SUFFERING FROM CHEST MIGRAINE HEADACHES, RESULTING FROM HIS DIABETIC CONDITION. DEFENDANTS DID NOT PROVIDE PLAINTIFF WITH TREATMENT OR MEDICATION UNTIL 4/11/11. PLAINTIFF SUFFERED SEVERE MIGRAINE HEADACHES RESULTING FROM STRESS, AND MENTAL ANGUISH. DEFENDANTS SHOWED DELIBERATE INDIFFERENCE TO THE MEDICAL NEEDS OF

13

Plaintiff Anderson. Chris Collins deliberately indifference of Plaintiff Medical needs created a dangerous situation, and created an unsafe, and hazardous environment. Medical care is the ERIC COURT holding Center is inadequate, and unprofessional. Medical records, vital in assessing a patient's potential for future sickness, were not used to assist Plaintiff Anderson diagnoses. Deficiencies are the norm, and Plaintiff was unable to obtain examinations or care upon request. Plaintiff had to spend substantial resources to receive medical care from a physician or hospital. Sick well occurs once a month, the screening process for determining whether a patient needed attention was inadequate, and in the interim, Plaintiff would have to beg, beguile or otherwise shift for serious medical attention.

13. From 2011, through 2011, Sheriff Timothy B. Howard also personally involved in the enclosed constitutional violations due to the facts that he (1) acting in a supervisory capacity, Defendant (a) failed to remedy a continuing or egregious wrong after learning of violations, (b) created a policy or custom under which the unconstitutional practices occurred or allowed such policy or custom to continue, or (c) was "grossly negligent" in managing subordinates who actually caused the constitutional violations, set forth herein. Sheriff Timothy B. Howard

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EXERCISED DELIBERATE INDIFFERENCE TO MY MEDICAL NEEDS BY INTENTIONALLY HIRING UNQUALIFIED NURSES AT THE ERIE COUNTY HOLDING CENTER, WHILE PASSING OVER THOSE NURSES WITH YEARS OF EXPERIENCE, AND PROPER CERTIFICATION. THESE UNQUALIFIED NURSES ARE STRIPPED TO BE FIRED BECAUSE THEY ARE EXPECTED TO BE SUED FOR MEDICAL NEGLIGENCE, AND MALPRACTICE, DUE TO MAJOR MISTAKES, AND PUTTING PLAINTIFF ANDERSON AT RISK OF SERIOUS INJURY OR DEATH. PLAINTIFF DESERVES MORE QUALIFIED NURSES, AND MORE OPENNESS ABOUT HIRING POLICIES. SHERIFF TIMOTHY B. HONARD'S SYSTEM, NOR THE UNQUALIFIED NURSES HERE ARE NOT PERFORMING UP TO THE STANDARDS PLAINTIFF SHOULD EXPECT. THE NURSES THAT COME FROM OUTSIDE AGENCIES TO WORK AT THE ERIE COUNTY HOLDING CENTER ARE NOT QUALIFIED, AND THEIR CREDENTIALS ARE QUESTIONABLE. THESE UNQUALIFIED NURSES ARE RECEIVING ON THE JOB TRAINING, AND MAKING THE AMOUNT OF MONEY THAT REQUISITE QUALIFIED NURSES SHOULD MAKE. THESE UNQUALIFIED NURSES DO NOT RECEIVE MEDICAL BENEFITS. THIS ENABLES SHERIFF TIMOTHY B. HONARD TO HIRE UNQUALIFIED NURSES FROM THE OUTSIDE AGENCY AT A CHEAP COST, WHICH PUT PLAINTIFF AT RISK. AS A RESULT OF TIMOTHY B. HONARD'S DELIBERATE INDIFFERENCE TO PLAINTIFF ANDERSON'S DIABETIC CONDITION, PLAINTIFF SUFFERED FURTHER PAIN, AND MENTAL ANGUISH. HE CONTINUED TO SUFFER FROM NIGHTMARE HEADACHES,

15.

AND DIABETIC NERVE PAIN IN HIS HAND, AND FEET. HIGH BLOOD SUGARS, LOWER BACK PAIN ASSOCIATED WITH NEURALGIC, BULGING DISCS, AND CHEST PAINS. SHEFF TIMOTHY B. HOWARD, DELIBERATE INDIFFERENCE TO MY MEDICAL NEEDS WHO UNPROFESSIONAL, AND INAPPROPRIATE. PLAINTIFF INJURED LASTED FROM 2/11/11, THROUGH 5/15/11. THESE INJURIES WERE SEVERE, DUE TO THE FACT THAT PLAINTIFF WAS DENIED PROMPT MEDICAL CARE BY THE JAIL. WHEN PLAINTIFF WAS FINALLY TAKEN TO THE JAIL INFIRMARY ON 4/11/11, HE WAS DIAGNOSED AS SUFFERING FROM DIABETIC NEURALGIC NEURALGIC, RESULTING FROM HIS DIABETIC CONDITION. DEFENDANTS DID NOT PROVIDE PLAINTIFF WITH TREATMENT OR MEDICATION UNTIL 4/12/11. PLAINTIFF SUFFERED SEVERE NEURALGIC NEURALGIC RESULTING FROM STRESS, AND MENTAL ANGUISH. DEFENDANTS SHOWED DELIBERATE INDIFFERENCE TO THE MEDICAL NEEDS OF PLAINTIFF ANDERSON. SHEFF TIMOTHY B. HOWARD, DELIBERATE INDIFFERENCE OF PLAINTIFF MEDICAL NEEDS CAUSED A DANGEROUS SITUATION, AND CAUSED AN UNLAWFUL, AND HAZARDOUS ENVIRONMENT. MEDICAL CARE BY THE ELITE COUNTY HOLDING CENTER IS INADEQUATE, AND UNPROFESSIONAL. MEDICAL RECORDS, WITH IN ACCESSING TO PLAINTIFFS RECORDS FOR FUTURE SICKNESS, WERE NOT USED TO ASSIST PLAINTIFF ANDERSON DIAGNOSES. DEFICIENCIES ARE THE NORM, AND PLAINTIFF WAS UNABLE TO OBTAIN EXAMINATIONS OR CARE UPON REQUEST. PLAINTIFF

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had to often submit grievances to receive medical care from a physician or hospital. Sick was once a month, the screening process for determining whether a patient needed attention is inadequate, and in the interim, plaintiff would have to beg doctors or other staff for serious medical attention.

14. Defendants are subjecting plaintiff to "grievous harm" caused by "egregious or flagrant conditions which deprive him of his rights, privileges, or immunities secured or protected by the Constitution or laws of the United States," and that these enclosed constitutional deprivations is pursuant to "a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities."

15. The defendants fail to provide adequate medical services to plaintiff Anderson who has a well known, and obvious serious medical needs. The defendants provide inadequate management of medical services, and treatment, inadequate administration of medication, and inadequate infection control.

16. WHEREFORE, DERRICK ANDERSON PRAYS FOR JUDGMENT IN HIS FAVOR, AND DAMAGES IN HIS FAVOR AGAINST ALL DEFENDANTS IN AN AMOUNT SUFFICIENT TO COMPENSATE

11

him for the pain and mental anguish suffered by him due to the deliberate indifference and intentional misconduct of defendants, but in NO EVENT LESS THAN \$300,000, together with attorney's fees and cost, and such additional relief as the Court may deem just and proper.

Respectfully Submitted,

Derrick Anderson, Plaintiff

Derrick Anderson, Plaintiff

PRO SE.

2/14/12



County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF HEALTH

ANTHONY J. BILLITTIER IV, M.D., FACEP
COMMISSIONER OF HEALTH

EDWIN HEIDELBERGER, M.D., Ph.D.
CHIEF MEDICAL OFFICER

May 2nd 2011

Bruce R. Mazzearella, Administrative Law Judge
Office of Disability Adjudication and Review
Key Center, Suite 200
50 Fountain Plaza
Buffalo, NY, 14202-2295

Re: Derrick Anderson DOB: 6/29/66

This information is being forwarded to you at the request of Mr. Anderson. He is a 44 year old right hand dominate African-american who has a history of diabetes, smoking, and has had a large infarct in the left cerebellar hemisphere (2010). He is currently being worked up for the finding of severe stenosis (narrowing) of the left vertebral artery. He complains of intermittent headaches, numbness, dizziness and unsteadiness. He is being maintained on glipizide, metformin, crestor, gabapentin, lisinopril and aspirin. Should you need any additional information, please contact the medical department at (716) 858-8090.

Sincerely,

Edwin Heidelberg, M.D., Ph.D.
Chief Medical Officer
Division of Public and Correctional Health.

NYS License 190805

PATENT COPY



County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF HEALTH

ANTHONY J. BILLITTIER IV, M.D., FACEP
COMMISSIONER OF HEALTH

EDWIN HEIDELBERGER, M.D., Ph.D.
CHIEF MEDICAL OFFICER

May 13th 2011

Bruce R. Mazzarella, Administrative Law Judge
Office of Disability Adjudication and Review
Key Center, Suite 200
50 Fountain Plaza
Buffalo, NY, 14202-2295

Re: **Derrick Anderson** DOB: 6/29/66

Addendum to letter of 5/2/11:

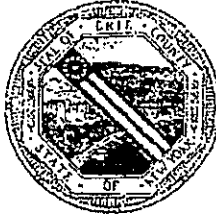
In addition to the previous diagnosis, Derrick also has a history of degenerative disc disease resulting in lower back pain with neuropathy. He is on neurontin for this with modest improvement.

Sincerely,

A handwritten signature in black ink, appearing to be "E. Heidelberg", is written over a horizontal line.

Edwin Heidelberg, M.D., Ph.D.
Chief Medical Officer
Division of Public and Correctional Health.

NYS License 190805



County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE

DEPARTMENT OF MENTAL HEALTH
PHILIP R. ENDRESS, LCSW, ACSW
COMMISSIONER

FORENSIC MENTAL HEALTH SERVICE
MICHAEL RANNEY, MS, CRC
DIRECTOR OF INTENSIVE ADULT M H SERVICES

March 29, 2011

Bruce R. Mazzearella, Administrative Law Judge
Office of Disability Adjudication and Review
Key Center, Suite 200
50 Fountain Plaza
Buffalo, NY 14202-2295

RE: 101-56-4801 / DERRICK MARCELL ANDERSON
DOB: 6/29/66

Dear Judge Mazzearella,

This information is being forwarded to you at the request of Mr. Anderson. The Forensic Mental Health Service of the Erie County Department of Mental Health has known Mr. Anderson since 1985, with our most recent contact being during this incarceration at the Erie County Holding Center. He has been followed consistently during his incarcerations in the facility over the years, and our most recent contact began on November 18th, 2010. In the past, he was treated for Schizophrenia and reports this diagnosis is by history. We do have a record of past treatment for this with antipsychotic medications; however more recently, based on prison treatment as well as outpatient mental health care, his more current diagnoses being that of Major Depressive Disorder and Polysubstance Abuse. His current medication is: Remeron 30 mg at bedtime. He presents in a stable manner and has been cooperative throughout his incarceration.

If you require further information regarding this individual, please feel free to our office at 858-8095.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael R. Ranney MS, CRC, LMHC".

Michael R. Ranney, MS, CRC, LMHC
Director of Intensive Adult Mental Health Services

MRR:kmd

AMENDED COMPLAINT

Revised 05/01 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

AMENDED COMPLAINT

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. *DERRICK ANDERSON ION 149*

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. *BN SEREN*

4. *BN JOE WERMAN*

2. *SHERIFF TIMOTHY B. HOWARD*

5. *BN DULVE*

3. *County Executive Chris Collins*

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes _____ No _____

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): DERRICK ANDERSON JCN 149

Defendant(s): BN SERENA, BN JOE WERTMAN, BN DUANE, Chris COLLINS,
Sheriff Timothy B. HOWARD

2. Court (if federal court, name the district; if state court, name the county): SUPREME COURT
ELIE COUNTY
3. Docket or Index Number: 20-11-3230
4. Name of Judge to whom case was assigned: HON. CHRISTOPHER J. BURNS
5. The approximate date the action was filed: FEBRUARY 11, 2011
6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved: _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

☒ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

☒ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

☒ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

☒ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|--------------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • <u>Denial of Medical Treatment</u> |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a person who is confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) _____,
defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): IN NO EVENT LESS THAN

\$300,000.00

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes _____ No _____ If yes, what was the result? GRANTED

Did you appeal that decision? ☒ Yes _____ No _____ If yes, what was the result? GRANTED

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) _____,
defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): IN NO EVENT LESS THAN
\$300,000.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE

GRANTED

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE

GRANTED

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

IN NO EVENT LESS THAN \$300,000.

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2/14/12
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Dennis Anderson

Signature(s) of Plaintiff(s)

ERIE COUNTY SHERIFF'S OFFICE



MEMORANDUM

TO: Chief T. Diina

FROM: Sgt. M. DiJoseph

DATE: 2/20/11

RE: I/M Derrick Anderson

Sir, on 2/19/11 I did receive a grievance from I/M Anderson, Derrick concerning him not receiving his PM medication on 2/17/11. I did speak with inmate Anderson and attempted to resolve his issue.

I immediately contact medical and did speak with RN Perez about his medication not being received. RN Perez did state to me that agency RN "Serena" did log in inmate Andersons medical chart that she dispensed his medication to him on 2/17/11.

I did check the C-Seg. log book and noted that RN Serena did not sign the log book and no medication pass was logged. I then questioned the Deputy that was working that shift. Deputy L. Stevens stated to me that, RN Serena was passing meds on C-Constant Observation and did not pass meds on C-Seg. Deputy Stevens stated to me that she even questioned RN Serena about Meds for C-Seg and RN Serena stated I have no meds for back there.

I did include copies of the Log book from the shift and a statement from Deputy L. Stevens

F25-80 10M

ERIE COUNTY SHERIFF'S OFFICETO Sgt. Di JosephDATE 2/19/11SUBJECT Charlie SegFROM Dep. L Stevens

On 2/17/11 this Deputy was assigned to work Charlie Seg. At approximately 20²⁰. Nurse Serena was passing medication on Charlie Constant Watch. This Deputy asked Nurse Serena if she had medication for Charlie Seg. Nurse Serena responded "no". This Deputy then stated "are you sure you don't have medication for Charlie Seg". Nurse Serena responded "I do not have meds for back there." End of report.

-L Stevens-1385-

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New York State Commission of Correction



Grievance Form - Part II

Facility: Erie County Holding Center

Grievance #: 11G-017

Name of Inmate ANDERSON, DERRICK # 149

Date Part I was received: 3/2/2011

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached (Yes)

(Including specific facts and reasons underlying the decision)

Grievance sustained, action requested granted in part. Per our verbal discussion earlier this morning, your medical concerns were addressed to your satisfaction. Health Department Administration have been forwarded all information pertaining to this incident. Please note, I have included the two subsequent grievances you filed, as they were concerning the same issue. Please contact me immediately if there are any further issues.

Signature of Grievance Coordinator

[Signature]
Chief Thomas Dina

Date: 3/3/11

☐ I have read the above decision of the Grievance Coordinator

☒ I agree to accept the decision

☐ I wish to appeal to the Chief Administrative Officer

Date: 3/3/11

Grievant Signature:

[Signature]

[Signature]
3/3/11 1440

Date: 3/3/11

Decision of the Chief Administrative Officer

Number of Additional Sheets Attached ()

(including specific facts and reasons underlying the decision)

Signature of the Chief Administrative Officer: _____

Date: _____

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

☐ I have read the above decision of the Chief Administrative Officer

☐ I agree to accept the decision

☐ I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____

28

1630
1130
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1200
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1230
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1300
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1430
1455
1500-2300

Chow on duty, all FED. *JS*
Tennis off duty - *JS*
Zella on lunch duty
65T *JS*
65T *JS*
65T *JS*
GST, AST's Resume *JS*
SGT Sullivan lunch for Sgt. Terry Hise in lunch and back at 1:30
Lt. L/D 65T [HLC-65T]
End of tour, ALL EQUIP TO RELIEF ALL APPEAR'S SECURE ATT. *JS*
Chari Seg Thursday, February 17, 2011 [HLC]
Lt. Isch Sgt. Whelan Dep L. Stevens

1500
1500-2300
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Unit on release - 1430s begin - incoming mail passed - *JS*
~~Unit on release~~ in unit for primary. *JS*
Chow and special diets passed
Wash trays and trash off unit - *JS*
1445 Indigent and commissary passed - *JS*
1455 KUBER on Post *JS*
1725 KUBER off Post *JS*
1730 unit L/D - 98T [HLC] - *JS*
1745 98T - *JS*
1800 98T - *JS*
1815 98T - *JS*
1825 98T - *JS*
1835 98T - *JS*
1845 98T - *JS*
1855 98T - *JS*
1900 98T - unit on release - 1430s resume - news papers on unit - *JS*
1930 130 Anderson escorted to medical w/ Sgt Whelan and Dep
Meyers - *JS*
1940 130 Anderson returned - *JS*
1955 Outgoing mail offered - *JS*

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Inmate Grievance Form

Grievance #

G -

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: DEWICK ANDERSON ICN # 149 H/U # C-59-36

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached () ON 2/17/11
during EVENING Med run, NURSE SEVING did NOT
GIVE ME MY DIABETES AND OTHER MEDICATIONS. HOWEVER,
SHE SIGNED OUT IN MY MEDICAL CHART THAT SHE
DID. MOST IMPORTANTLY, SHE DID NOT SIGN IN THE CHARLIE
SEI log-BOOK THAT SHE DELIVERED MEDS ON CHARLIE SEI
WHICH CLEARLY PROVES I DIDN'T GET MY MEDS.

OVER
PAGE 2#

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

THAT NURSE SEVING BE REMOVED FROM CIRCULATION IN
THE JAIL UNTIL SHE LEARNS THE LAY OUT OF THE JAIL
SO SHE CAN FIND HER PATIENTS. TO STEP UP, AND TAKE
RESPONSIBILITY FOR NOT MEETING HER MORAL, MEDICAL, AND
LEGAL RESPONSIBILITY BY FALSIFYING MY MEDICAL CHART.

Grievant Signature: Wendie Anderson Date/Time Submitted: 2/19/11

Receiving Staff Signature: [Signature] #55 Date/Time Received: 2/17/11 11:10 AM

Summary of facility staff attempts to resolve (Attach relevant documentation) Number of Additional Sheets Attached ()

For medication administration record
on 2-17-11. On Screen 3-11 pm

Signed all night time meds
checked with medical in agreement that meds were not
received. [Signature]

Officer/Supervisor Signature: [Signature]

☒ I accept this resolution

☐ I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

[Signature]

Date: 2/19/11

Time: 2:30 PM

Forwarded to Grievance Coordinator

2/27/11

5:45

Officer/Supervisor Signature:

Date:

Time:

Received by Grievant Coordinator

Signature of Grievance Coordinator:

Date:

Time:

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

PAGE 2 OF GRIEVANCE.

THE CAMERAS SHOW NURSE SERINA ENTERING C-BLOCK WITH THE MED CART, BUT SHE DID NOT COME TO C-SEG. NURSE SERINA SHOWED A GRAVE DIFFERENCE TO MY MEDICAL NEEDS. NURSE SERINA FALSIFIED MEDICAL DOCUMENTS STATING SHE GAVE ME MEDICATIONS ON 2/17/11, AND SHE DIDN'T. NURSE SERINA DID NOT MEET HER MORAL, MEDICAL, OR LEGAL RESPONSIBILITY. SHE DID NOT STOP, AND TAKE RESPONSIBILITY, AND PASS OUT MEDICATIONS ON CHARLIE SEG. HOWEVER, NURSE SERINA TURNED AROUND FOR THE INTEREST OF HERSELF, AND OF CONVENIENCE. NURSE SERINA CAME FROM AN OUTSIDE AGENCY. SHE IS USE TO DEALING WITH A HOSPITAL SETTING. (PATIENTS IN ROOMS THAT SHE IS FAMILIAR WITH). WHICH IS VERY IMPORTANT IN CASE OF A LIFE THREATENING, OR SERIOUS EMERGENCY. HOWEVER, IN A JAIL SETTING, LIKE THAT OF THE ELLE COUNTY HOLDING CENTER, NURSE SERINA IS NOT FAMILIAR WITH THE LAYOUT OF THE JAIL, THEREFORE, LIKE IN MY CASE, SHE CANNOT FIND HER PATIENTS TO GIVE THEIR MEDICATIONS, OR CARE FOR THEM. THIS CAUSES A LIFE THREATENING, AND DANGEROUS SITUATION BECAUSE A LOT OF INMATES LIKE MYSELF TAKE MEDICATIONS FOR

3

CHRONIC ILLNESSES LIKE DIABETES, HIV, HEART
ATTACKS, AND STROKES, CANCER ETC.
NURSE SEVINAK'S INABILITY TO LOCATE PATIENTS
TO GIVE THEM MEDICATION, CREATES A
HAZARDOUS, AND UNSAFE ENVIRONMENT.

32 Dep Wesolowski 1332
medical
3-1-11

Case 6:12-cv-06039-JWF

Document 4 Filed 03/06/12 Page 35 of 46
Inmate Grievance Form

Grievance #

11G-017

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: Devick Anderson

ICN #

149

H/U #

C-59-36

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached () AT

APPROXIMATELY 10:45AM NURSE JOE CAME TO CHARLIE SEG WITHOUT MY DIABETES MEDICATION MEDFORMIN. HE BECAME VERY RUDE AND UNPROFESSIONAL. HE STATED, I DON'T HAVE YOUR MEDS, AND I'M NOT GOING TO GET THEM. HE WAS VERY VERBALLY ABUSIVE TO ME. HE'S RETALIATING AGAINST ME FOR FILING LEGITIMATE GRIEVANCE AGAINST OTHER NURSES, AND THEIR DYSFUNCTIONAL MEDICAL DEPARTMENT.

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached () FOR NURSE

NURSE JOE TO BE REMOVED FROM CIRCULATION UNTIL HE LEARNS HOW TO DELIVER MEDICATION, AND MEET HIS MORAL, AND MEDICAL RESPONSIBILITY. I REQUEST THAT HE BE FIRED FOR HIS UNPROFESSIONALISM, AND VERBAL ABUSE.

Grievant Signature: Devick Anderson

Date/Time Submitted: 3/1/11 10:59AM

Receiving Staff Signature: Dep Wesolowski

Date/Time Received: 3/1/11 11:00

Summary of facility staff attempts to resolve (Attach relevant documentation)

Number of Additional Sheets Attached ()

Dep Wesolowski unable to solve
forward to medical per Sgt Loebstro

3/3/11 SEE PREVIOUS RESPONSE. AS THIS IS THE SAME ISSUE CONCERNING EMPLOYEES OF THE DEPT. OF HEALTH, THEY WILL BE INVESTIGATED JOINTLY.

I'm helping to sign off on grievance, feels it needs more immediate attention JMB 56
3/2/11 - 1400

Officer/Supervisor Signature

I accept this resolution

I do not accept this resolution and wish to file a formal grievance

Signature of INMATE: Devick Anderson

Date: 3/2/11

Time: 2:00 PM

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

Date:

Time:

Received by Grievant Coordinator

Signature of Grievance Coordinator:

Date:

Time:

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

PAGE 2

NURSE JOE FAILED TO USE SKILL, CARE, AND LEARNING THAT A COMPETENT NURSE WOULD EMPLOY IN DELIVERING MEDICATIONS, AND DEALING WITH PATIENTS. NURSE JOE FAILED TO USE COMMENDABLE SPEED OR SKILL IN DELIVERING CHRONIC ILLNESS MEDICATIONS ON TIME TO MR. (METFORMIN). INSTEAD OF NURSE JOE STEPPING UP AND TAKING RESPONSIBILITY, AND TRYING TO REMEDY THE PROBLEM, FOR HIS OWN INTEREST, AND CONVENIENCE, HE BECAME UNPROFESSIONAL, AND VERBALLY ABUSIVE TO ME. NURSE JOE FAILED TO SIGN THE CHARLIE SEG LOG BOOK BEFORE HE ATTEMPTED TO PASS OUT MEDICATIONS HE DIDN'T EVEN HAVE ON THE MEDICATION TRAY. THEREFORE, IT WAS NO NEED FOR HIM TO BE ON CHARLIE SEG BEING UNPROFESSIONAL AND VERBALLY ABUSIVE. NURSE JOE IS GUILTY OF MEDICAL NEGLIGENCE, AND MALPRACTICE, AND MUST BE FIRED. HE WILL BE SUED.

Devick ANDERSON
149

34

Grievance #

11 G-017

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: Devick Anderson

ICN #

144

H/U #

C-5j-36

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached () I AM AFRAID

TO TAKE MEDICATIONS BECAUSE THE NURSES FROM THE OUTSIDE AGENCY DON'T KNOW WHAT THEY DOING. ON 3/1/11 NURSE JOE BROUGHT THE WRONG MEDICINE THAT TO CHARLIE SEG THEN STARTED A ARGUMENT WITH ME THEN WROTE A FABRICATED MISDEMEANOR ON ME THAT GOT ME 15 DAYS KEEPLOCK. NURSE JOE RETALIATED AGAINST ME BECAUSE IVE FILED GRIEVANCES

CONTINUE

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached () ON PAGE 2

FOR NURSE "JOE" TO BE TAKEN OUT OF CIRCULATION UNTIL HE LEARNS HOW TO FIND HIS PATIENTS WITH THE RIGHT MEDICATION CART. FOR NURSE JOE TO BE RE-TRAINED IN NURSING.

Grievant Signature:

Devick Anderson

Date/Time Submitted:

3/2/11

Receiving Staff Signature:

V. A.

Date/Time Received:

1430

Summary of facility staff attempts to resolve

Number of Additional Sheets Attached ()

(Attach relevant documentation)

This Deputy spoke to Medication at 1413 making them aware of Mr. Anderson's condition. The Nurse stepped up to give Mr. Anderson his medication. He cannot take medication after 3 PM.

Officer/ Supervisor Signature

V. A. B32

I accept this resolution

I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

Devick Anderson

Date:

3/2/11

Time:

2:30 PM

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

Date:

Time:

Received by Grievant Coordinator

Signature of Grievance Coordinator:

Date:

Time:

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

Page "2"

I find myself in a life threatening situation. Such as urgentl needed medical attention. I am dizzy, weak, light headed, blurred vision, chest pains, and trouble walking. My blood sugar is high. I can feel it.

Nurse Joe, came to Charlie seg on 3/11/11, at approximately 10:45 AM. He failed to sign the log-book, and he had the wrong medicine that Nurse Joe failed to use. Deloit + procedure by not signing the log-book, but attempted to pass out meds he didn't even have. One has to question, why was he here? Was he high or intoxicated? The cameras show Nurse Joe entering c-block, but he did "not have my medications. However, he stated, "you'll get your medications when I bring them." Nurse Joe should a grave indifference to my medical needs. Nurse Joe is unprofessional and very rude. Nurse Joe started a argument because he was embarrassed because he wasn't doing his job correctly. He got the guys on m1 gallery worked up, then left, and wrote ~~that~~ FALSE MISBEHAVIOR reports on me, and another inmate. Nurse Joe did not meet his

2

Moral, Medical, or legal responsibility. He did not stop and take responsibility, and pass out medications. He didn't have because he didn't have the right medication that however he joined, and ran for the (interest) of himself, and of convenience. Nurse Joe came from a outside agency. He is used to dealing with a hospital setting. (Patients in rooms that he is familiar with). Which is very important in case of a life threatening of serious emergency. However, in a Jail setting, like that of the fire court holding center, Nurse Joe is not familiar with the layout of the Jail, therefore like in MD case, he can't find his patients to give their medications, or care for them. Nurse Joe is also not familiar with the information because his inability to find, and bring the right medication led to the right setting. It's a serious problem. This causes a life threatening and dangerous situation because lot of inmates like myself take medication for chronic illnesses, like Diabetes, HIV, Heart Attacks, Strokes, Cancer, Etc... Nurse Joe's inability to locate patients with the correct medication that and correct medications creates a hazardous and unsafe environment. MA hand

3
SUGARS HAVE BEEN RUNNING 450 to 500
EVER DAY. IVE BEEN PUT ON INSULIN SHOTS
JUST RECENTLY TO LOWER IT. AT LEAST 3 TIMES
A WEEK, MY BLOOD SUGAR IS SO HIGH THE "METER"
WONT READ A NUMBER. ITLL JUST SAY "HI."
THIS IS SERIOUS. DIABETES IS A CHRONIC ILLNESS.
NO CURE. IVE HAD TWO (2) STROKES ALREADY.
IM SUPPOSE TO TAKE MY DIABETES MEDICATION
BEFORE I EAT BREAKFAST. NURSE JOE BROUGHT
THE WRONG MEDICINE Lately WITH NO MEDICATION
AT 10:45 (LUNCH TIME) THIS IS LIFE THREATENING
BECAUSE THE MEDICATION DONT WORK IF I EAT
BEFORE I TAKE IT. NURSE JOE, AND OTHER NURSES
ARE WASTING THEIR TIME BRINGING MY MEDICATION
AFTER I EAT. THIS IS WHY MY SUGAR IS ALWAYS
HIGH, AND I ALWAYS HAVE TO TAKE INSULIN SHOTS.
MY DIABETES WAS WELL UNDER CONTROL OUT IN
SOCIETY BEFORE I CAME TO THE HOLDING CENTER.

DEWICK AND FISON

149

3/2/11

Inmate Grievance Form

Grievance #

G -

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: DENICK ANDERSON

ICN # 149 020-236

H/U #

C-Sg-36

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached ()

THE NURSES ARE FAILING TO BRING ME MY DIABETES MEDICATION IN THE MORNING BEFORE I EAT BREAKFAST IN THE MORNING. THIS IS LIFE THREATENING AND A GRAVE INDIFFERENCE TO MY MEDICAL NEEDS BECAUSE THE MEDICATION (MET FORMIN + ACTOS) DOES NOT WORK WHEN I TAKE IT AFTER I EAT. ALSO, IT IS 10:00 PM AND THE NURSE STILL HASN'T BROUGHT MY DIABETES + CHOLESTROL MEDICATION.

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

FOR THE NURSES TO BRING MY DIABETES MEDICATION BEFORE I EAT BREAKFAST OR CALL ME TO COME GET IT BEFORE I EAT. FOR THE NURSES TO MEET THEIR MORAL AND MEDICAL RESPONSIBILITY FOR THE NURSES TO SHOW THEIR INMATE PATIENTS MORE RESPECT AND CARE AND STOP THE VERBAL ABUSE.

Grievant Signature:

DENICK ANDERSON

Date/Time Submitted:

2/20/11

Receiving Staff Signature:

D. Hernandez

Date/Time Received:

2/20/11 10pm

Summary of facility staff attempts to resolve (Attach relevant documentation)

Number of Additional Sheets Attached ()

This Deputy did call Medical staff at 9:40 pm to advise of 'im' request for medication.

2/25/11 GRIEVANCE SUSTAINED, ACTION REQUESTED GRANTED. INFIRMARY STAFF HAVE BEEN REINFORCED OF THE NEED TO DELIVER MEDICATION AS DIRECTED BY THE FACILITY PHYSICIAN. (P)

1200HRS

Officer/Supervisor Signature

Dante Hernandez

I accept this resolution

I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

DENICK ANDERSON

Date:

2/28/11

Time:

9:15 AM

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

Sgt J. Bayne

Date:

2/28/11

Time:

1000

Received by Grievant Coordinator

Signature of Grievance Coordinator:

Date:

Time:

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)



Grievance Form - Part II

Facility: Erie County Holding Center

Grievance #: 11G-017

Name of Inmate ANDERSON, DERRICK # 149

Date Part I was received: 3/2/2011

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached (Yes)

(Including specific facts and reasons underlying the decision)

Grievance sustained, action requested granted in part. Per our verbal discussion earlier this morning, your medical concerns were addressed to your satisfaction. Health Department Administration have been forwarded all information pertaining to this incident. Please note, I have included the two subsequent grievances you filed, as they were concerning the same issue. Please contact me immediately if there are any further issues.

Signature of Grievance Coordinator

[Signature]
Chief Thomas Dilna

Date: 3/3/11

☐ I have read the above decision of the Grievance Coordinator

☒ I agree to accept the decision

☐ I wish to appeal to the Chief Administrative Officer

Date: 3/3/11

Grievant Signature:

[Signature]

[Signature]
3/3/11 1440

Date: 3/3/11

Decision of the Chief Administrative Officer

Number of Additional Sheets Attached ()

(including specific facts and reasons underlying the decision)

Signature of the Chief Administrative Officer:

Date: _____

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

☐ I have read the above decision of the Chief Administrative Officer

☐ I agree to accept the decision

☐ I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____



Grievance Form - Part II

Facility: Erie County Holding Center

Grievance #:

11-G042

Name of Inmate: Derrick Anderson 149 C-1

Date Part I was received:

4/19/2011

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached (No)

(Including specific facts and reasons underlying the decision)

Grievance sustained action requested granted. Medical Administration is aware of your concerns with the timely delivery of your prescribed medication and have assured me that they are working diligently to correct this.

Signature of Grievance Coordinator

John Rodriguez
Chief John Rodriguez

Date:

4-19-11

☒ I have read the above decision of the Grievance Coordinator

☒ I agree to accept the decision

☐ I wish to appeal to the Chief Administrative Officer

Date:

4/19/11

Grievant Signature:

[Signature]

Date:

4/19/11

Decision of the Chief Administrative Officer

Number of Additional Sheets Attached ()

(including specific facts and reasons underlying the decision)

Signature of the Chief Administrative Officer:

Date:

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

☐ I have read the above decision of the Chief Administrative Officer

☐ I agree to accept the decision

☐ I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature:

Date:

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator:

Date:

40.

Pass meds

Inmate Grievance Form

Grievance #

11 G-042

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate:

Dewick Anderson

ICN #

144

H/U #

C-16-001

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached ()

CHRIS COLLINS is hiring unqualified nurses at the Erie County Holding Center, while passing over those nurses with years of experience, and proper certification. These unqualified nurses are afraid to be fired because they are afraid to be sued for malpractice, due to major mistakes, and putting patients at risk of serious injury or death. The Holding

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

CONTINUE ON PAGE 2A

FOR THIS UNIDENTIFIED NURSE TO BE SUSPENDED OR FIRED, TO BE SENT BACK TO NURSING SCHOOL FOR proper training, and qualification, and credentials, so he doesn't harm me, or cause me a serious injury or death. TO BE NOTIFIED OF THE DISCIPLINE HE RECEIVED.

Grievant Signature:

Dewick Anderson

Date/Time Submitted:

2:30 PM / 4/15/11

Receiving Staff Signature:

ASTORNS - 1285

Date/Time Received:

4/15/11 @ 1555

Summary of facility staff attempts to resolve (Attach relevant documentation)

Number of Additional Sheets Attached (3)

medical issue - unable to resolve
outside of Scope of ability to resolve

Officer/Supervisor Signature

ASTORNS - 1285

I accept this resolution

I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

Dewick Anderson

Date:

4/15/11

Time:

5:14 PM

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

ASTORNS

Date:

4/15/11

Time:

2:20 PM

Received by Grievant Coordinator

Signature of Grievance Coordinator:

Date:

Time:

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

2

CENTER'S IMMEDIATE DESERVE MORE QUALIFIED NURSES, AND MORE OPENNESS ABOUT HIRING POLICIES. THE SYSTEM, NOR THE UNQUALIFIED NURSES HERE ARE NOT PERFORMING UP TO THE STANDARDS THE IMMEDIATE SHOULD EXPECT. THE NURSES THAT COME FROM OUTSIDE AGENCIES TO WORK AT THE HOLDING CENTER ARE NOT QUALIFIED, AND THEIR CREDENTIALS ARE QUESTIONABLE. THESE NURSES ARE RECEIVING ON THE JOB TRAINING, AND MAKING THE AMOUNT OF MONEY THAT REQUISITE QUALIFIED NURSES SHOULD MAKE. TODAY AT APPROXIMATELY 2:15 PM A NEW, BLACK MALE NURSE FAILED TO IDENTIFY HIMSELF BY PUTTING HIS NAME TAG INSIDE HIS SHIRT. HE FAILED TO SIGN THE CHURCH LOG-BOOK BEFORE PASSING OUT MEDS. WHEN THIS NURSE ARRIVED AT 2:15 PM, HE DIDN'T HAVE ALL OF MY MORNING MEDS, NOR HAVE OF MY AFTERNOON MEDS. HE DIDN'T HAVE THE CHART WITH HIM, NOR DID HE HAVE MY MEDICAL CHARTS WITH HIM, WHICH HE SHOULD HAVE, SO HE COULD HAVE MARKED THE CHART SO HE PASSED OUT MY MEDICATIONS SO HE WOULDN'T HAVE MADE A MISTAKE WHICH HE DID, BY GIVING ME TO TAKE SOME OF MY MEDICATIONS TWICE. IT TOOK THIS NURSE FROM 9:00 AM TO 2:15 PM TO LOCATE ME TO PASS OUT MEDS HE DIDN'T HAVE. IN THE MEANTIME I'M SUFFERING HIGH BLOOD SUGARS, LOWER BACK PAIN ASSOCIATED WITH HERNIATED, BULGING DISCS, CHEST PAINS, 21

3

shortness of breath, dizziness, and headache. This unidentified black male nurse, denied me my medications, lied, and said he was coming back, then said he was going home and denied me medical treatment. This nurse displayed negligence, and recklessness. This nurse, edited, and falsified my medical charts before he went home today. Nurse Crystal had to come give me the rest of my medications, some medications twice, because she's not sure what medications he gave me. The black male nurse, did not meet his moral, medical or legal responsibilities in this matter. He did not stop, and take responsibility, and go get medical charts to make sure he was placing out the right medications. He continued to attempt to pass out medications that he could not even identify like a qualified nurse with credentials would be able to do with ease. He continued to pass out meds on a whim. This nurse caused my above injuries by not being able to locate me for over five hours. If this was his first day on the job, or he was new, he should not have been sent out to pass out meds by himself, not knowing the layout of the hospital. This causes a dangerous situation, and unrelated to unlabel, and hazardous condition. I ~~take~~ take medications for chronic illnesses.



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

April 26, 2012

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 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>Collins, Larry J. v. County of Erie, Erie County Holding Center Medical Staff, Doe, John and Doe, Jane</i>
Documents Received:	Prisoner Complaint Form and Decision and Order
Name of Claimant:	Larry Collins 11B3629 Five Point Correctional Facility State Route 96, P.O. Box 119 Romulus, New York 14541
Claimant's attorney:	Pro Se

Should you have any questions, please call.

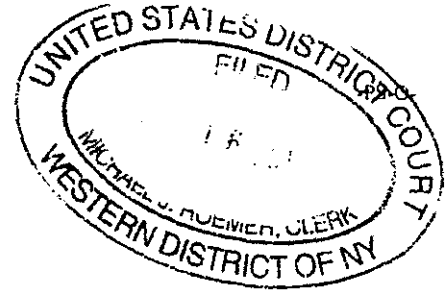
Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle Parker

MMP/dld
Enc.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



LARRY COLLINS, 11B3629,

Plaintiff,

-v-

DECISION AND ORDER
12-CV-6022P

COUNTY OF ERIE, ERIE COUNTY HOLDING
CENTER MEDICAL STAFF and ERIE COUNTY
HOLDING CENTER ENTIRE STAFF,

Defendants.

Plaintiff *pro se* filed an amended complaint as directed by this Court's Order of February 27, 2012 (Docket # 6) and requested appointment of counsel (Docket # 7). The Court has reviewed the amended complaint pursuant to 28 U.S.C. § 1915.

There is insufficient information before the Court at this time to make the necessary assessment of plaintiff's claims under the standards promulgated by *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997), and *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986), as defendants have not yet been identified or answered the complaint. Therefore plaintiff's motion for appointment of counsel is denied without prejudice at this time.

Plaintiff has named in the caption the County of Erie, Erie County Holding Center Medical Staff and Erie County Holding Center Entire Staff. In the body of the amended complaint, however, plaintiff alleges that John and Jane Doe medical staff failed for three days to provide him the insulin medication they know he is prescribed and upon which he relies, despite his numerous complaints and having the matter brought to their attention by another staff member.

As discussed in the Court's prior Order, although municipalities are considered "persons" for purposes of 42 U.S.C. § 1983, a local government such as Erie County may not be held liable under § 1983 unless the challenged action was performed pursuant to a municipal policy or custom. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694 (1978). Here, plaintiff does not contend that any of the alleged constitutional deprivations were caused by or occurred pursuant to an official custom or policy of Erie County, and thus plaintiff has failed to state a § 1983 claim against this defendant. The claims against the County of Erie are, therefore, dismissed.

Further, although plaintiff has named all of the Erie County Holding Center staff, he has named only John and Jane Doe medical staff, and has alleged facts that could state a claim for deliberate indifference to his serious medical needs only as to those defendants. The claims against all defendants except John and Jane Doe Medical staff are dismissed.

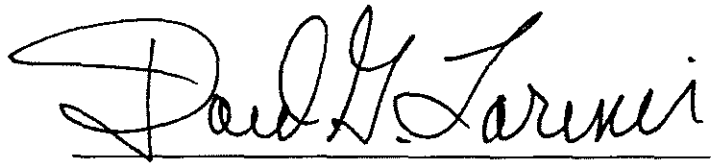
Plaintiff has named no defendants who can be served at this time. Plaintiff has described the John and Jane Doe defendants as the November 18, 2011 3 to 11 shift medical staff. Pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d. Cir. 1997)(per curiam), the Court requests that the County Attorney General of Erie County ascertain the full names of the John and Jane Doe defendants plaintiff seeks to sue. The County Attorney is also requested to provide the addresses where all of the John and Jane Doe defendants can currently be served. The Attorney General need not undertake to defend or indemnify these individuals at this juncture. This order merely provides a means by which plaintiff may name and properly serve the defendants as instructed by the Second Circuit in *Valentin*.

The County Attorney of Erie County is hereby requested to produce the information specified above regarding the identities of the John and Jane Doe defendants by **May 15, 2012**. The information should be sent to the Pro Se Office, 304 U.S. Courthouse, 2 Niagara Square, Buffalo,

New York 14202. Once this information is provided, plaintiff's complaint shall be deemed amended to reflect the full names of the John and Jane Doe defendants, summonses shall be issued and the Court shall direct service on those defendants.

The Clerk of Court is directed to mail a copy of this Order to the County Attorney of Erie County at 95 Franklin Street #1634 Buffalo, NY 14202. The Clerk is also directed to correct the caption to indicate that the only remaining defendants are John and Jane Doe Medical Staff, 3 to 11 shift on or about November 18, 2011.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer". The signature is fluid and cursive, with a large initial "D".

DAVID G. LARIMER
United States District Judge

DATED: April 16, 2012
Rochester, New York

Orders on Motions

6:12-cv-06022-MWP Collins v. County of Erie et al **CASE CLOSED on 04/16/2012**

ProSe

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 4/16/2012 at 3:13 PM EDT and filed on 4/16/2012

Case Name: Collins v. County of Erie et al

Case Number: 6:12-cv-06022-MWP

Filer:

WARNING: CASE CLOSED on 04/16/2012

Document Number: 8

Docket Text:

ORDER denying [7] Motion to Appoint Counsel; County of Erie is to produce the info regarding Jane and John Doe defendants by 5/15/2012; Clerk of Court is directed to mail a copy of this order to the County Attorney of Erie and the Clerk is directed to amend the caption (see order for details). Signed by Hon. David G. Larimer on 4/16/2012. (TO)

6:12-cv-06022-MWP Notice has been electronically mailed to:

6:12-cv-06022-MWP Notice has been delivered by other means to:

Larry J, Collins
11B3629
FIVE POINTS CORRECTIONAL FACILITY
Box 119
Romulus, NY 14541

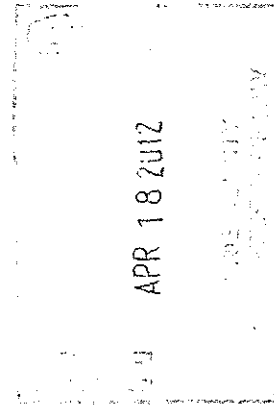
The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1042579058 [Date=4/16/2012] [FileNumber=2158430-0]
] [2920335565f9c64f126cc3005fda158d5e2330d31fd7d7dda55355f7243be11acff
5af535bcf655d19e07e1932ce56adc45372363f6fbab8917729e28cd7c317]]



Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

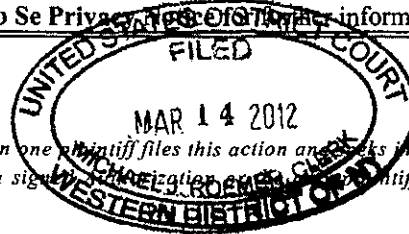
FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

12CV6022P

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signature of the plaintiff to be considered will be the plaintiff who filed an application and Authorization.



1. LARRY J Shelton Collins JR

2.

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. County of Erie

4. Holding Center

2. Erie County Holding center

5. Entire Staff

3. Medical Staff and Erie County

6.

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: LARRY J Shelton Collins JR 11B 3629

Present Place of Confinement & Address: Five Point Correctional Facility

State Rt 96 P.O. Box 119 Romulus N.Y. 14541

Name and Prisoner Number of Plaintiff: LARRY J. Collins

Present Place of Confinement & Address: Five Points Correctional Facility

State Rt 96 P.O. Box 119 Romulus N.Y. 14541

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Erie County Holding, County of Erie, Entire STAFF

(If applicable) Official Position of Defendant: Nurse, RN, LPN Entire STAFF.

(If applicable) Defendant is Sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: 40 Delaware AVE Buffalo N.Y. 14202

Name of Defendant: Entire STAFF
Nurse, RN, LPN Entire Erie Holding Co. County of Erie

(If applicable) Official Position of Defendant: Nurse, LPN, RN Entire STAFF

(If applicable) Defendant is Sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: 40 Delaware AVE Buffalo N.Y. 14202

Name of Defendant: Erie County Holding Co. County of Erie. Medical STAFF

(If applicable) Official Position of Defendant: Nurse RN, LPN RN Entire STAFF

(If applicable) Defendant is Sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: 40 Delaware AVE Buffalo N.Y. 14202

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes _____ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): LARRY J. COLLINS

Defendant(s): Erie County Holding Co. County of Erie, Medical STAFF

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: 1-10-12 NA

6. What was the disposition of the case?

Is it still pending? Yes No X

If not, give the approximate date it was resolved.

Disposition (check the statements which apply):

 Dismissed (check the box which indicates why it was dismissed):

X By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

 By court for failure to exhaust administrative remedies;

 By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

 By court due to your voluntary withdrawal of claim;

 Judgment upon motion or after trial entered for

 plaintiff

 defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes No X

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): LARRY J Shelton Collins JR.

Defendant(s): Erie County Holding Ct. County of Erie

2. District Court:

3. Docket Number:

4. Name of District or Magistrate Judge to whom case was assigned:

5. The approximate date the action was filed:

6. What was the disposition of the case?

Is it still pending? Yes No X

If not, give the approximate date it was resolved.

Disposition (check the statements which apply):

 Dismissed (check the box which indicates why it was dismissed):

- ☒ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- By court for failure to exhaust administrative remedies;
- By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- By court due to your voluntary withdrawal of claim;

 Judgment upon motion or after trial entered for

- plaintiff
- defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|---|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | <input checked="" type="checkbox"/> Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) Erie County Holding Ct medical STAFF,
defendant (give the **name and position held** of **each defendant** involved in this incident) Entire medical
OFFICIAL Capacity

did the following to me (briefly state what each defendant named above did): Erie County Holding
Center, County of Erie, Entire STAFF Didn't Provide me with
the service that I need, I Believe, I was treat untust and
unfair. STAFF didn't show any concern Pertaining to this
matter, I believe that someone should be held accountable
for this. This matter was brought to their attention, by other
employee, and they fail to do so. ~~they~~ They Just over look
this, And ~~Butt~~ ^{Pretend} Like nothing happen.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Cruel and mental Punishment

The relief I am seeking for this claim is (briefly state the relief sought): I would like to be
Award for Cruel And Mental Punishment.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? _____ Yes X No If yes, what was the result? _____

Did you appeal that decision? _____ Yes X No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I believe that this
matter would Just ^{been sweep} ~~sweep~~ under the rug

A. SECOND CLAIM: On (date of the incident) 11-18-11,
defendant (give the **name and position held** of **each defendant** involved in this incident) I Believe that
John Doe Should be Held accountable, Me and ms Janet
was talking about it. That I didn't recieve my Insulin

did the following to me (briefly state what each defendant named above did): I Believe that
John Doe and Jane Doe didn't ^{DO} the, ~~didn't~~ duties
John Doe and Jane Doe, IS responsible ^{For Not given} medication ^{given} I'm mate
their medical. The 3rd shift are responsible Carrying for carrying
I'm mate down to medical at night. John and Jane are
to make sure that every I'm mate get medical attention
that he ~~asked~~ ^{app} or ~~the~~ ^{her} need. I Believe that Staff is
aware of every body Circumstance and Iress Illness

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Fifth Amend Eight Amend.
being denied medical attention, Also cruel and mental Punishment

The relief I am seeking for this claim is (briefly state the relief sought): I would like Justice,
And Award for Pain Suffering. Staff is aware because
This is in my medical record, that I'm diabetic

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ____ Yes ____ ☒ No If yes, what was the result? _____

Did you appeal that decision? ____ Yes ____ ☒ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I Believe that no
one are willingly to accept that that they were at fault

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

I believe that they just didn't care. There is no
excuse for this type of treatment. I Believe that
John and Jane didn't show any interest

Do you want a jury trial? Yes ____ No ____

I Believe that John Doe And, Jane Doe Didn't Perform Their Duties to Capacity of Facility. Its their responsible to make sure that every Inmate take their medication. Also to attend to ~~Every~~ Inmate medical need. The 3 toll Shift at Night Are responsible for Calling Inmate down to the infirmary. I Believe that they know every Inmate Circumstance and Issue dealing with their medical need. It is their responsible to log in medical book, That every Inmate has taken their medication.

Fifth Amend, That I was being denied medical Attention, And staff didn't show and concern. They ARE AWARE of my illness.

Eight Amend By refusing to attend to my medical NEED, yes this is cruel And Mental Punishment, ALSO By Being Neglecting me.

The relief I am seeking for this claim.

Is that Justice will be serve, And be Award For Pain, And Neglect And mental Punishment.

IF you did not exhaust your Administrative remedie

I Believe that Jane Doe And John Doe Aren't willingly to admit that It was their Fault. Also I Believe that this matter would have Just been Sweep under the rug. I Honestly Believe that I wouldn't gotten any responsible back.

Summarize the relief request by you in each statement

1. By not getting medical attention that I need.
2. Neglect and cruel mental punishment
3. I want Justice to be serve.
4. I want John Doe and Jane Doe to admit that they are responsible for this
5. And admit that they didn't perform their duties to capacity or facility

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Larry J. Collins # 11B3622
Five Point Correction Facility

Larry Collins
Signature(s) of Plaintiff(s)

Fifth Amend. That know one ~~should~~ every be denied Medical Attention. yes under NEW YORK State And Federal law Every one are entitle^{to} Medical Attention even IF they don't have medical cover. This is ~~hip~~ ^{hip} law

Eight Amend I don't understand why I was being treat like This, Their is No reason or Excuse for this type of treatment

When this matter WAS Address to STAFF. The Facility told the Complaint that they would have to call, last Facility That I was At. They ~~Call~~ ^{Call} Eric county correctional facility And They verify my Circumstance. yes Eric county Holding Center ARE aware of my Circumstance. Also they were given instruction that I was and Diabetic, And I take 52 unit of insulin at Night. yes Everything are document. The Fact that This Happen, And They Just ignore it, This shouldn't ~~have happen at all~~ have happen ~~at all~~ At All, I Believe

Entire STAFF Should be held accountable. Like I said I had made numerous complain and STAFF Just ignore Them. STAFF didn't try to correct or rectify this matter. No ~~apology~~ ^{apology} were made. I Believe that Inmate should Recieve better treatment. And better And update Equipment Also that STAFF Should Pay more attention to Inmate with Special Need. Negligence lack of treatment I brought this to nurse attention who WAS Putting out Medication. And her respons was that, they will call ~~me~~ you down to infirmary.

7

yes this is deadly disease that I deal with daily For three days I didn't get my Insulin.



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

April 26, 2012

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 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>Nenni, Dora c/o Herr, Eileen C. v. Shah, Nirav R., M.D. and Dankert, Carol</i>
Document Received:	Notice of Petition & Verified Petition
Name of Claimant:	Dora Nenni c/o Eileen C. Herr 4257 Susan Drive Williamsville, New York 14221
Claimant's attorney:	Howard S. Rosenhoch, Esq.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP/dld

Enclosure

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

DORA NENNI
c/o Eileen C. Herr
4257 Susan Drive
Williamsville, New York 14221,

Petitioner,

For a Judgment Pursuant to CPLR Article 78,

-against-

NIRAV R. SHAH, M.D., M.P.H., as Commissioner of the
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower
Empire State Plaza
Albany, New York 12237,

and

CAROL DANKERT, as Commissioner of the ERIE
COUNTY DEPARTMENT OF SOCIAL SERVICES
Rath Office Building
95 Franklin Street
Buffalo, New York 14202,

Respondents.

This paper received at the
Erie County Attorney's Office
from James Huelsch
the 25 day of April, 2012
at 12:42 a.m./p.m.
Kelly Brunkworth
Assistant County Attorney

NOTICE OF PETITION
Index No. 2012 - 1341

Hon. Shirley Troutman, J.S.C.
Justice Presiding

FILED
ACTIONS & PROCEEDINGS

APR 23 2012

ERIE COUNTY
CLERK'S OFFICE

PLEASE TAKE NOTICE that upon the annexed Verified Petition of DORA NENNI, verified on the 20th day of April, 2012, an application will be made to this Court at 25 Delaware Avenue, Part 11, Buffalo, New York, on the 15th day of June, 2012 at 9:30 a.m. or as soon thereafter as counsel can be heard, for a judgment pursuant to Article 78 of the Civil Practice Law and Rules, reversing the decision of Respondent Commissioner of the New York

Commissioner of the New York State Department of Health, which affirmed the determination of Respondent Commissioner of the Erie County Department of Social Services, and further directing Respondents to write off the nursing home payments made by Petitioner from August 2009 through January 2010 from future NAMI payments and excess resources, to the effect of rendering Petitioner's Medicaid application as if it had been submitted August 28, 2009; and directing Respondents to set the penalty period to expire on February 1, 2014, as adjusted by reductions in the amount of uncompensated value of transferred assets as such funds are used for future care, and not on December 1, 2014.

PLEASE TAKE FURTHER NOTICE that a demand is hereby made for the service of an Answer -- including certified transcripts of the Fair Hearing proceedings held on August 16, 2011 and continued on September 20, 2011 -- and supporting Affidavits at least five (5) days before the aforesaid date of the hearing.

Petitioner designates Erie County as the venue of this proceeding on the basis that the determination was made in Erie County.

Dated: Buffalo, New York
April 20, 2012

Respectfully submitted,

JAECKLE FLEISCHMANN & MUGEL, LLP

By: 

Howard S. Rosenhoch, Esq.

Gayle L. Eagan, Esq.

Avant Building – Suite 900

200 Delaware Avenue

Buffalo, New York 14202-2107

(716) 856-0600

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

DORA NENNI,

Petitioner,

For a Judgment Pursuant to CPLR Article 78,

-against-

NIRAV R. SHAH, M.D., M.P.H., as Commissioner of the
NEW YORK STATE DEPARTMENT OF HEALTH,

and

CAROL DANKERT, as Commissioner of the ERIE
COUNTY DEPARTMENT OF SOCIAL SERVICES,

Respondents.

The petition of DORA NENNI respectfully shows that:

1. Petitioner DORA NENNI is 96 years of age, having been born on February 26, 1916. She resides at Beechwood Nursing Home in the Town of Amherst, County of Erie, State of New York.
2. Respondent NIRAV R. SHAH, M.D., M.P.H. is the Commissioner of the New York State Department of Health ("Health Department") and administers the Medical Assistance program ("Medicaid") in New York State.
3. Respondent CAROL DANKERT is the Commissioner of the Erie County Department of Social Services ("Social Services") and administers the Medicaid program in the County of Erie.

PAID
CHECK _____ CASH _____

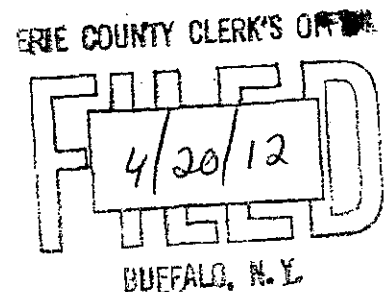
APR 20 2012

ERIE COUNTY
CLERK'S OFFICE

VERIFIED PETITION

Index No.

I 2012-1341



4. An application for Medical Assistance (hereinafter "Medicaid"), including coverage of nursing facility services, was submitted on the August 28, 2009 on behalf of Petitioner by her attorneys, Jaeckle Fleischmann & Mugel, LLP, Jenna S. Strazzulla, Esq., of Counsel.

5. Social Services requested documentation from Petitioner on October 1, 2009 and November 2, 2009, which was provided by Ms. Strazzulla on October 15, 2009 and November 19, 2009, respectively.

6. Although a Medicaid application is required to be completed by Social Services in 45 days, on or about April 20, 2010, five months after the documents were provided, Social Services purportedly sent Ms. Strazzulla yet another document request. Ms. Strazzulla, however, did not receive it.

7. On May 12, 2010, Petitioner's August 28, 2009 Medicaid application was denied. A copy of Social Services' denial of the application is attached to and made a part of this petition as **Exhibit A**.

8. Thereafter, Ms. Strazzulla had conferences with a Social Services caseworker, Amy Owczarczak, and a Social Services supervisor, Wendy McCormack, both in the Nursing Home Division. An agreement was reached among them that the nursing home payments for the period from August 2009 through January 2010 would be "written off" from the Petitioner's future NAMI payments or excess resources (hereinafter "Agreement").

9. Ms. Strazzulla confirmed this Agreement in a letter to Mr. McCormack and Ms. Owczarczak dated May 25, 2010. This letter specifically stated the above terms, adding "**You have explained that the practical effect of the write off effectively renders Ms. Nenni's**

application as if it had been submitted August 28, 2009." (Emphasis added). A copy of this letter is attached to and made a part of this petition as **Exhibit B**.

10. With her May 25, 2010 letter, Ms. Strazzulla enclosed all of the documentation requested in a fax she received from Social Services on May 18, 2010.

11. Thus, Ms. Strazzulla accepted May 18, 2010 as the new application date, relying on the Agreement she had reached with Social Services that the effect of writing off the six months of nursing home payments would have the same result as if the original application date of August 28, 2009 was in effect.

12. As of the May 12, 2010 denial, Petitioner had sixty (60) days in which to appeal the denial of her Medicaid application.

13. In reliance on the Agreement, Petitioner, by her attorneys, refrained from filing an appeal from the May 12, 2010 denial, which was otherwise her right.

14. At no time did Social Services, or their agents, indicate that they did not have the authority to enter into the Agreement.

15. After the Agreement was reached, Petitioner, by her attorneys, continued to check on the status of the application.

16. Specifically, Ms. Strazzulla requested an update on the status of the application on July 27, 2010 and August 24, 2010. It was not until September 13, 2010, almost four months after the latest documents were submitted to Social Services, that Ms. Strazzulla was asked for further documentation. This further documentation was prepared for delivery on September 27, 2010 and hand-delivered on September 28, 2010.

17. On September 29, 2010, the May 18, 2010 re-application was denied, without Social Services reviewing the documents submitted by Petitioner's attorneys the day before.

18. Petitioner did not agree with the determination denying Petitioner's Medicaid application, and a Fair Hearing was requested on November 22, 2010. The parties did not dispute that the Fair Hearing request was timely made.

19. The Fair Hearing was held on December 22, 2010. Social Services was present and did not object to the submission by Petitioner's attorney of the May 25, 2010 letter in which she confirmed the Agreement made between Social Services and Petitioner to write off the nursing home payments made from August 2009 through January 2010 to future NAMI payment and excess resources.

20. On February 2, 2011, Administrative Law Judge Mariely Downey issued her Fair Hearing decision. In her decision, Judge. Downey reviewed the entire history of the application process and addressed the agreement made between Social Services and Petitioner's legal counsel, raising the acknowledgment of the agreement to the level of a "finding of fact" in this case. A copy of the Fair Hearing decision is attached to and made a part of this petition as **Exhibit C**.

21. Judge Downey also found that Respondents had prematurely denied Petitioner's May 18, 2010 re-application and directed Social Services to continue to process the application and to so notify Petitioner.

22. After more documentation was requested by Social Services and supplied by Petitioner's attorneys, a Notice of Decision was issued by Social Services on May 5, 2011. A copy of that Notice is attached to and made a part of this petition as **Exhibit D**.

23. That Notice, however, ignored the Agreement made on behalf of Petitioner and extended the penalty period out to a total of 57.039697 months to December, 2014.

24. Petitioner appealed this Notice of Decision on June 9, 2011.

25. A Fair Hearing was conducted by Administrative Law Judge Sarah M. Smith-Ronan on August 16, 2011 and September 20, 2011.

26. During the course of the Fair Hearing, Ms. Strazzulla testified, indicating that the agency had made an Agreement relative to the NAMI payments. That position was consistent with Judge Downey's decision, wherein she recognized that an Agreement existed between the parties..

27. On December 20, 2011, Judge Smith-Ronan issued her Fair Hearing decision, affirming the determination by Social Services to deny Petitioner's application for Medicaid coverage of nursing facility services for the period February 1, 2010 through November 2014, with a remainder to be applied to December 2014. A copy of this Fair Hearing decision is attached to and made a part of this petition as **Exhibit E**.

28. Petitioner has complied with and completed the administrative appeal process and now appeals to this Court for adjudication.

FIRST CAUSE OF ACTION

29. Petitioner repeats and re-alleges paragraphs 1 through 28 above as if fully set forth herein.

30. Respondents' refusal to enforce the Agreement memorialized May 25, 2010 to write off the nursing home payments made from August 2009 through January 2010 from future NAMI payment and excess resources to the effect of rendering Petitioner's Medicaid application

as if it had been submitted August 28, 2009, was arbitrary and capricious and contrary to a binding Agreement.

31. By reason of the foregoing, Petitioner is entitled to have the decision of Respondents reversed.

SECOND CAUSE OF ACTION

32. Petitioner repeats and re-alleges paragraphs 1 through 31 above as if fully set forth herein.

33. Petitioner entered into a binding Agreement with Social Services.

34. In reliance of that Agreement, Petitioner, by her counsel, was induced to refrain from filing an appeal from the denial of benefits issued on May 12, 2010.

35. Before at least one tribunal, Respondents acknowledged the existence of the Agreement.

36. Petitioner was wrongfully denied benefits based upon Respondents' position that no Agreement had been reached.

37. Respondents are equitably estopped from denying the existence and effect of an Agreement which they entered and upon which Plaintiff detrimentally relied.

38. By reason of the foregoing, Petitioner is entitled to have the decision of Respondents reversed.

THIRD CAUSE OF ACTION

39. Petitioner repeats and re-alleges paragraphs 1 through 38 above as if fully set forth herein.

40. In the Fair Hearing before Judge Downey, Respondents acknowledged the existence of the Agreement.

41. Subsequent to that Fair Hearing, Judge Downey issued a decision in which she made a finding of fact that the Agreement memorialized in the May 25, 2010 letter was in fact, made by and between the Department of Social Services and the Ms. Strazzulla on behalf of Petitioner.

42. Respondents are barred by the doctrines of collateral estoppel and *res judicata* from taking a contrary position, and are accordingly bound by the Agreement.

43. By reason of the foregoing, Petitioner is entitled to have the decision of Respondents reversed.

WHEREFORE, DORA NENNI, as Petitioner, prays that a judgment of this Court shall issue:

A. Reversing the decision of Respondents and directing Respondents to write off the nursing home payments made by Petitioner from August 2009 through January 2010 from future NAMI payments and excess resources, to the effect of rendering Petitioner's Medicaid application as if it had been submitted August 28, 2009,

B. Directing Respondents to set the penalty period to expire on February 1, 2014, as adjusted by reductions in the amount of uncompensated value of transferred assets as such funds are used for future care, and not on December 1, 2014; and

C. Granting such other and further relief as to this Court may seem just and proper, including the costs and disbursements of this action, and attorneys' fees pursuant to Article 86 of the New York Civil Practice Law and Rules.

DATED: Buffalo, New York
April 20, 2012

JAECKLE FLEISCHMANN & MUGEL, LLP

By: 

Howard S. Rosenhoch, Esq.

Gayle L. Eagan, Esq.

Attorneys for Petitioner

Avant Building – Suite 900

200 Delaware Avenue

Buffalo, New York 14202-2107

Telephone No.: (716) 856-0600

1055236

VERIFICATION

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

EILEEN C. HERR, being duly sworn, deposes and says that she is the attorney-in-fact for Petitioner DORA NENNI; that she has read the foregoing Petition and knows the contents thereof; that the same is true to her own knowledge, except as to those matters therein stated to be alleged on information and belief, as to those matters she believes them to be true.


EILEEN C. HERR, P.O.A.

Sworn to before me this
23rd day of April, 2012.


Notary Public

BEVERLEY S. BRAUN
Notary Public State of New York
Qualified in Erie County
My Commission Expires April 7th 20 16



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

April 30, 2012

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 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>Bailey, Jareld v. Boller, William and Fowler, Wilmer</i>
Document Received:	Verified Petition
Name of Claimant:	Jareld Bailey 133 Hamlin Road Buffalo, New York 14208
Claimant's attorney:	Carl H. Dobozin, Esq. 70 Niagara Street, Suite 500 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP/dld

Enc.

cc: Michael A. Siragusa, Erie County Attorney

FILED
04/16/2012/ 16:21:14
ERIE COUNTY CLERK
RCPT # 12059799
I 2012001293

RECEIVED APR 19 2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

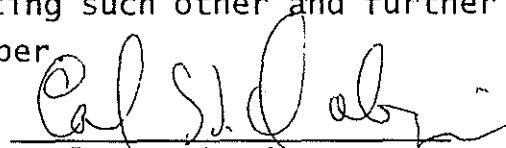
RE: In the Matter of the Application of
Jareld Bailey For a Firearms License
Pursuant to Section 400.00 of the
New York Penal Law For a Judgment
Pursuant to Article 78 of the Civil
Practice Law

Notice of Petition
Index No.:

PETITIONER

HON. M. WILLIAM BOLLER
WILMER FOWLER
SUPERVISOR
ERIE COUNTY PISTOL
PERMIT DEPT

Please take notice that upon the annexed Petition of Jareld Bailey verified on April 14, 2012, and upon the exhibits thereto attached, the undersigned will apply at a Special Term of the Supreme Court, held in the City of Buffalo on ____ day of _____ 2012, at 10:00 on the forenoon of that day, or as soon thereafter as counsel can be heard for a Judgment pursuant to C.P.L.R. Article 78 reviewing and annulling the determination and denial of Acting New York Supreme Court Justice, M. William Boller, and confirmation of the Supervisor of the Erie County Pistol Permit Department which denied the issuing of the Firearms license to the Petitioner and granting such other and further relief as the Court may seem just and proper.


Carl H. Dobozi, Esq.
70 Niagara St., Ste. 500
Buffalo, NY 14202

TO: New York State Attorney General,
Local Office at
Main Place Tower, 350 Main Street,
Ste. 300A, Buffalo, New York, 14202
And
Hon. M. William Boller,
25 Delaware Avenue,
Buffalo, New York, 14202,
And
Wilmer Fowler, Jr.
Supervisor of Erie County
Pistol Permit Department, Erie
County Hall, 95 Franklin
Street, Buffalo,
New York, 14202

PAID
CHECK _____ CASH _____

RECEIVED

APR 16 2012

PISTOL PERMIT DEPT.

APR 16 2012

ERIE COUNTY
CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

RE: In the Matter of the Application
Jareld Bailey For a Firearms License Index No.:
Pursuant to Section 400.00 of the
New York Penal Law For a Judgment
Pursuant to Article 78 of the Civil
Practice Law

PETITIONER

VERIFIED PETITION

Against

Hon. M. William Boller,
Acting Supreme Court Justice
And
Wilmer Fowler, Jr.,
Supervisor of Erie County
Pistol Permit Department

RESPONDENTS

The Petition of Jareld Bailey respectfully alleges:

1. That Petitioner is a citizen of the United States and resides at 133 Hamlin Road, Buffalo, New York, 14208, County of Erie.
2. That Petitioner is 43 years of age having been born on January 2, 1969;
3. That the Petitioner has duly applied for a Firearms License to the Erie County Pistol Permit Department in 2011;
4. That the Petitioner has fulfilled all the requirements for a Firearms license on two (2) occasions, first in 2008 and again in 2011, and the Respondent's deny his Application for the same reason for "good moral character and his inability to lead a law abiding life as demonstrated by his illegal possession of 127 packages of heroin on September 20, 1989. This was a criminal offense that

Petitioner was acquitted of by the State of New York, Supreme Court, Appellate Division, 3rd Department, on May 5, 1994. The Indictment and all charges were dismissed and sealed pursuant to C.P.L. §160.50. The effect of the aforesaid sealing is outlined in Criminal Procedure Law §160.60;

5. That the Respondents are aware of the aforesaid dismissal and sealing and continuously attempt to circumscribe the law of the State of New York;

6. That there has been no Hearing or explanation for withholding the Firearms license, only the Judge's Order;

7. In addition, the Petitioner submits two (2) exhibits:

a. Exhibit A: The letter from Mr. Fowler forwarding Judge Boller's Order; and

b. Exhibit B: Memorandum and Order dismissing the charges against the Petitioner (constitutionally defective) with the Court's Sealing Order, C.P.L. §160.50;

8. Petitioner respectfully submits that the decision disapproving his current Application for a New York State Pistol License was arbitrary and capricious and an abuse of discretion. The Respondents apparently rely on the dismissed and sealed charges. Judge M. William Boller seems to be disregarding his oath of office to follow the law of the State of New York;

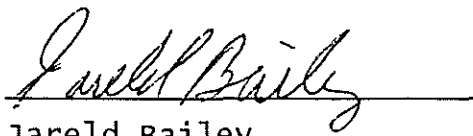
9. That no previous Application for this or similar relief has been made by Petitioner in this or similar proceeding;

WHEREFORE, petitioner respectfully prays pursuant to New York C.P.L.R. Article 78 that this Court review the determination to disapprove Petitioner's Application for a New York State Firearms

license by Respondents to determine that their acts and conduct were arbitrary and capricious and an abuse of discretion and grant a final Judgment pursuant to the N.Y.C.P.L. Article 78:

1. Annuling, vacating and setting aside Respondents' written disapproval dated December 8, 2011, and allowing a Firearms license to be issued.

DATED: April 16, 2012


Jareld Bailey

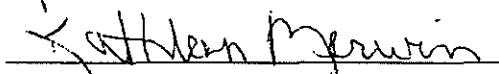
CLIENT
VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

I, JARELD BAILEY, being duly sworn, deposes and says that deponent is the Plaintiff in this action and has read this Verified Petition; deponent knows its content and knows that it is true to the best of deponent's knowledge, except as to those matters stated to be upon information and belief, and as to those deponent believes them to be true.


Jareld Bailey

Sworn to before me this 16th day
April 2012.



Notary Public

KATHLEEN MERWIN
COMMISSIONER OF DEEDS
in and for the City of Buffalo, NY, Erie County
My Commission Expires: Dec. 31, 2012

EXHIBIT A



County of Erie

WILLMER FOWLER, JR.
PISTOL PERMIT SUPERVISOR

COUNTY CLERK

December 8, 2011

Mr. Jareld S. Bailey
133 Hamlin Rd
Buffalo, New York 14208

Dear Mr. Bailey:

Please be advised that your application for a Firearms License has been denied by Honorable M. William Boller, Acting Justice of the Supreme Court.

Enclosed is the order specifying his reason(s) for his decision.

Sincerely,

A handwritten signature in black ink that reads "Willmer Fowler, Jr.".

Willmer Fowler, Jr.
Supervisor
Erie County Pistol Permit Department

WF/JP

Enc.

C:\WPDOCS\DENIAL

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION OF

JARELD S. BAILEY

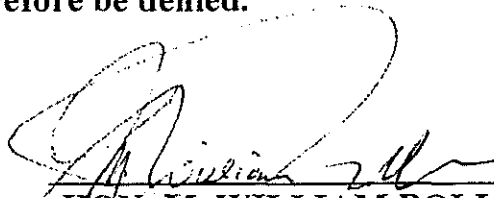
ORDER

FOR A FIREARMS LICENSE PURSUANT TO
SECTION 400.00 OF THE NEW YORK STATE
PENAL LAW

Upon a full review of the application for a firearms license by the above-named applicant, and following a full investigation of the application, said application is hereby DENIED for the following reason: his lack of good moral character and his inability to lead a law abiding life as demonstrated by his illegal possession of 127 packages of heroin on September 20, 1989.

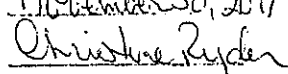
The application must therefore be denied.

SO ORDERED.



HON. M. WILLIAM BOLLER
A. J. S. C.

DATED: November 21, 2011
Buffalo, New York

GRANTED
November 30, 2011


COURT CLERK

EXHIBIT B

Supreme Court—Appellate Division
Third Judicial Department

Decided and Entered: May 5, 1994

62808

THE PEOPLE OF THE STATE
OF NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

JARELD BAILEY,

Appellant.

Calendar Date: March 29, 1994

Before: Mikoll, J.P., Crew III, White, Casey and Peters, J.

OFFICE OF
ALBANY COUNTY CLERK
ALBANY, N.Y.
MAY 10 3:25 PM '94

Pottle, Danziger & Dobozin (Carl H. Dobozin of counsel),
Buffalo, for appellant.

Sol Greenberg, District Attorney (Christopher D. Horn of
counsel), Albany, for respondent.

Crawford, J.

Appeal from a judgment of the County Court of Albany County
(Keegan, J.), rendered March 4, 1991, upon a verdict convicting
defendant of the crimes of criminal possession of a controlled
substance in the third degree and criminal possession of a
controlled substance in the fourth degree.

The issue here is whether the conduct of defendant provided
the police with a founded suspicion that criminality was afoot,
thus justifying the common-law inquiry undertaken by them. We
think not and reverse.

On September 20, 1989, at approximately 8:30 in the evening,
defendant, carrying a black bag, alighted from a bus at the
Greyhound terminal in the City of Albany. As defendant stepped
off the bus, he was observed by City of Albany Police Detective
John Burke, who was engaged in a narcotics interdiction action at
the terminal. Burke was wearing civilian clothes but had his
detective's shield around his neck and visible to the public.
Burke was standing in plain view of the bus passengers for the

purpose of observing them and gauging their reaction to his presence. Burke's partner, City of Albany Detective Timothy Murphy, was standing nearby with his badge also clearly visible. As the bus passengers disembarked, they were directed by the driver to exit into the terminal through gate 10.

As defendant approached the gate, he made eye contact with Burke, left the line of passengers and entered the terminal through a door to the east of gate 10. This aroused the suspicion of Burke and Murphy and they began to monitor defendant in the terminal. Defendant was then observed putting his black bag on a waiting room seat and walking to a public telephone, which he did several times, sometimes with the bag and sometimes without it. He appeared to Burke to be very nervous. Thereafter, defendant went to the bathroom without his bag, came out of the bathroom, retrieved the bag and reentered the bathroom. At that point Burke and Murphy entered the bathroom, and Burke asked defendant if he was having a problem, to which defendant replied, "No." Burke thereupon explained his purpose for being at the terminal and asked defendant if he could search his bag. Defendant consented to the search and, upon opening the bag, Burke found 127 glassine envelopes containing a white powder, which was later determined to be heroin.

As a consequence, defendant was arrested and later indicted for criminal possession of a controlled substance in the third and fourth degrees. Defendant moved to suppress the heroin found in the bag, which motion was denied. Defendant has appealed his conviction of criminal possession of a controlled substance in the third and fourth degrees contending, inter alia, that County Court erred in denying his motion.

It is now well established that the police have very broad authority to approach individuals and ask questions relating to identity, destination or the reason for an individual's presence in a given area so long as they have an articulable reason for doing so (see People v. Hollman, 79 NY2d 181). Where, however, a police officer's questions become accusatory and the inquiry focuses on the possible criminality of the individual approached, such questioning "must be supported by a founded suspicion that criminality is afoot" (id., at 191).

Here, the police encounter occurred at a bus terminal known to be visited by drug couriers, and when defendant conspicuously entered the terminal at a gate other than the one directed by the bus driver, Burke and Murphy possessed an articulable reason to request information (see People v. De Roux, 40 NY2d 210, 220). However, defendant's conduct was not susceptible of innocent as

well as culpable interpretation" and could not, therefore, generate a founded suspicion that criminality was afoot (*id.*, at 216). Indeed, Burke testified that he had no reason to believe that defendant was carrying contraband at that time. Nor could defendant's conduct in going back and forth to a public telephone and to the bathroom create such a suspicion. Thus, while Burke and Murphy possessed a proper basis to request information of defendant, including the innocuous inquiry as to whether there was any problem, defendant's behavior did not provide the officers with a basis to request a search of his luggage (*see, People v Hollman, supra*, at 194). Because defendant's consent was the product of an improper police inquiry, County Court erred in denying defendant's motion to suppress the evidence found in his bag. Moreover, the record reveals that absent such evidence, the People did not make out a prima facie case and, hence, dismissal of the indictment is appropriate (*see, People v Bouton*, 50 NY2d 130).

Mikoll, J.P., White, Casey and Peters, JJ., concur.

ORDERED that the judgment is reversed, on the law, motion to suppress the heroin found in defendant's bag granted and the indictment dismissed.

ENTER:

/s/ Michael J. Novack

Michael J. Novack
Clerk

APPELLATE DIVISION SUPREME COURT - THIRD DEPARTMENT
STATE OF NEW YORK
I, MICHAEL J. NOVACK, Clerk of the Appellate Division of the Supreme Court Third Judicial Department, do hereby certify that I have compared this copy with the original thereof filed in said office on *May 5, 1994* and that the same is a correct transcript thereof and of the whole said original. IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on *FEB 28 2007*

Michael J. Novack

OFFICE OF
ALBANY COUNTY CLERK
ALBANY, N.Y.
May 10 3 25 PM '94

COURT SEALING ORDER
CPL SECTION 160.50

FROM: ALBANY COUNTY COURT
ALBANY COUNTY COURTHOUSE
16 EAGLE STREET, ROOM 102
ALBANY, NEW YORK 12207

INDEX # DA 609-89

DEFENDANT'S NAME: JARELD BAILEY
ADDRESS: 133 HAMLIN RD, BUFFALO NY 14208-

DATE OF BIRTH: 01-02-1969

DATE OF ARREST: 09-20-1989 NYSID# 6465406J

COURT CONTROL #: 11581159Z

INDICTMENT # TO BE SEALED: 13-2647APR
CHARGE(S) TO BE SEALED:

3-CRIM POSS NARCO DRUG INT/ PL-220.16-01 -BF- -N-001
4-CRIM POSS NARCO DRUG-4TH PL-220.09-01 -CF- -N-001

DEFENSE ATTORNEY: FRED SANTIAGO
ADDRESS: 8 THURLOW TERRACE, ALBANY, NY 12203-

TO: NYS DIVISION OF CRIMINAL JUSTICE SERVICES
HON. P. DAVID SOARES, ALBANY COUNTY DISTRICT ATTORNEY
HON. JAMES L. CAMPBELL, ALBANY COUNTY SHERIFF
HON. THOMAS G. CLINGAN, ALBANY COUNTY CLERK
POLICE DEPARTMENT: ALBANY POLICE DEPT
CITY/TOWN/VILLAGE COURT: ALBANY POLICE DEPT

The above captioned criminal action having on May 5, 1994, been terminated in favor of the above named defendant in accordance with Section 160.50 of the Criminal Procedure Law and it appearing that no other criminal action or proceeding is pending against that person, it is ordered that every photograph, photographic plate or proof and all palm prints, and fingerprints, and all duplicates taken pursuant to Article 160 of the Criminal Procedure Law in regard to this action or proceeding shall forthwith be, at the discretion of the recipient agency, either destroyed or be returned to such person or the attorney who represented him/her. Departments or agencies who transmitted or otherwise forwarded copies of such to any agency of the United States or any other state of jurisdiction outside New York State shall request in writing that all copies be returned to the Police Department or law enforcement agency which transmitted or forwarded them and upon such return said department or agency shall return them as provided above. All official records and papers relating to the arrest or prosecution BE SEALED and not made available to any person or public or private agency, except as provided in Section 160.50(1)(d), and or Section 160.50(1)(c).

REMARKS: 5-5-94 AD3 JUDGEMENT REVERSED, INDICTMENT DISMISSED

cc: WM

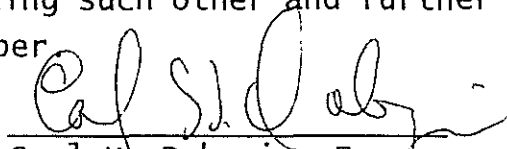
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

RE: In the Matter of the Application of
Jareld Bailey For a Firearms License
Pursuant to Section 400.00 of the
New York Penal Law For a Judgment
Pursuant to Article 78 of the Civil
Practice Law

Notice of Petition
Index No.:

PETITIONER

Please take notice that upon the annexed Petition of Jareld Bailey verified on April 14, 2012, and upon the exhibits thereto attached, the undersigned will apply at a Special Term of the Supreme Court, held in the City of Buffalo on _____ day of _____ 2012, at 10:00 on the forenoon of that day, or as soon thereafter as counsel can be heard for a Judgment pursuant to C.P.L.R. Article 78 reviewing and annulling the determination and denial of Acting New York Supreme Court Justice, M. William Boller, and confirmation of the Supervisor of the Erie County Pistol Permit Department which denied the issuing of the Firearms license to the Petitioner and granting such other and further relief as the Court may seem just and proper.


Carl H. Dobozi, Esq.
70 Niagara St., Ste. 500
Buffalo, NY 14202

TO: New York State Attorney General,
Local Office at
Main Place Tower, 350 Main Street,
Ste. 300A, Buffalo, New York, 14202
And
Hon. M. William Boller,
25 Delaware Avenue,
Buffalo, New York, 14202,
And
Wilmer Fowler, Jr.
Supervisor of Erie County
Pistol Permit Department, Erie
County Hall, 95 Franklin
Street, Buffalo,
New York, 14202



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

April 30, 2012

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 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>Batch, Joanne as Parent & Guardian of Fleming, an Infant & Flemming, Brittany v. City of Buffalo, City of Buffalo, Dept. of Public Works, Parks and Streets</i>
Document Received:	Notice of Motion
Name of Claimant:	Joanne Batch 354 Davey Street Buffalo, New York 14206
Claimant's attorney:	Richard A. Nicotra Andrews, Bernstein & Maranto, LLP 69 Delaware Avenue, Suite 1200 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP/dld
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JOANNE BATCH AS PARENT AND
GUARDIAN OF BRITTANY FLEMING, AN INFANT
AND BRITTANY FLEMMING,

Claimants,

vs.

CITY OF BUFFALO
CITY OF BUFFALO, DEPARTMENT OF PUBLIC WORKS,
PARKS AND STREETS

Respondants.

**NOTICE OF MOTION
TO SERVE LATE NOTICE
OF CLAIM**

Index No. I2012-958

This paper received at the
Erie County Attorney's Office
from Richard A. Nicotra on
the 25 day of April, 2012
at 10:50 a.m./p.m.

MOTION MADE BY: ANDREWS, BERNSTEIN & MARANTO, LLP, 420 Franklin
Street, Buffalo, New York, 14202, attorneys for Claimants,
JOANNE BATCH and BRITTANY FLEMMING.

DATE, TIME AND PLACE OF HEARING: _____, 2012, at _____, in the _____ noon,
or as soon thereafter as counsel can be heard before the Hon.
_____, at a Special Term, Part _____,
_____ Delaware Avenue, to be held at the Courthouse thereof,
Buffalo, New York.

SUPPORTING PAPERS: Affirmation of Richard A. Nicotra, Esq., sworn to on the _____th day
of April, 2012 and the proposed Notice of Claim, duly verified
the _____th day of April, 2012.

RELIEF DEMANDED AND GROUNDS: An order pursuant to General Municipal Law § 50-e (5), granting
leave to serve the annexed proposed Notice of Claim upon
Respondant, COUNTY OF ERIE, and for such other and further
relief as to the court may seem just and proper.

The above-entitled action is for personal injury.

Dated: April 25, 2012
Buffalo, New York

By: _____

Richard A. Nicotra, Esq.

ANDREWS, BERNSTEIN & MARANTO, LLP
Attorneys for Claimant

FILED
04/25/2012 15:28:10
ERIE COUNTY CLERK
RCPT # 12065580
I 2012000958

420 Franklin Street
Buffalo, New York 14202
(716) 842-2200

TO: CITY OF BUFFALO
Law Department
1100 City Hall
Buffalo, New York 14202

CITY OF BUFFALO
Department of public works
502 City Hall
Buffalo, New York 14202

COUNTY OF ERIE DEPARTMENT OF LAW
95 Franklin Street, Suite 1634
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JOANNE BATCH AS PARENT AND
GUARDIAN OF BRITTANY FLEMING, AN INFANT
AND BRITTANY FLEMMING,

Claimants,

vs.

AFFIRMATION

Index No. I2012-958

CITY OF BUFFALO
CITY OF BUFFALO, DEPARTMENT OF PUBLIC WORKS,
PARKS AND STREETS

Respondants.

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

Richard A. Nicotra, Esq., attorney at law duly licensed to practice in the State of New York, hereby affirms under penalty of perjury:

1. I am associated with Andrews, Bernstein & Maranto, LLP, attorneys for the Claimants, JOANNE BATCH and BRITTANY FLEMMING, in the above-entitled action. As such, I am fully familiar with the facts and circumstances contained in this Affirmation.
2. I make this Affirmation in support of the Claimant's motion for leave to serve a late notice of claim pursuant to General Municipal Law § 50-e(5).
3. On or about March 1, 2008, plaintiff, Brittany Fleming was walking out of Lovejoy Pool when she was caused to slip and fall down the inside stairs upon puddles of water at 1171 East Lovejoy Street, City of Buffalo, County of Erie and State of New York, resulting in serious personal injuries. Upon information and belief, the water was there because of negligence and lack of care on the part of the defendants, COUNTY OF ERIE, and/or CITY OF BUFFALO, and/or CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS

AND STREETS and/or its agents, servants and employees.

4. Thereafter, Claimant failed to file a Notice of Claim against Respondent COUNTY OF ERIE within ninety (90) days of her fall. Plaintiffs now move for leave to serve a late Notice of Claim upon Respondent. See Exhibit A.

5. New York General Municipal Law Section 50-e (5) provides that in determining whether to grant a motion to file a late notice of claim, a court shall consider, in particular, whether the public corporation, or its attorney, or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within ninety (90) days or a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including but not limited to: whether the claimant in serving a notice of claim made an excusable error concerning the identity of the public corporation against which the claim should be asserted; or whether the delay in service the notice of claim substantially prejudiced the Respondent.

Facts:

6. Upon information and belief, Respondents, City of Buffalo and City of Buffalo Department of Public Works, Parks and Streets, who co-maintain the property along with the County of Erie, were put on notice of Claimant's fall within ninety (90) days of its occurrence. See a letter from our office to City of Buffalo Legal Department, dated May 8, 2008, attached hereto as Exhibit B, and letter from our office to City of Buffalo Department of Public Works, dated May 8, 2008, attached hereto as Exhibit C.

7. Claimant erroneously identified the sole municipal entity involved with the maintenance and upkeep of the pool performed by Erie County as being performed solely by the City of Buffalo and the City of Buffalo Department of Public Works, and served a notice of

claim upon both of those entities on or about May 8, 2008.

8. On or about April 9, 2012 the undersigned received a telephone conversation from the Buffalo City attorney, Robert Quinn, who stated that while the City of Buffalo owned the property at 1171 East Lovejoy Street, the COUNTY OF ERIE was an additional party responsible for maintenance at the 1171 East Lovejoy Street property. Pursuant to a temporary contract that has since expired.

ARGUMENT

I: CLAIMANT IS ENTITLED TO A TOLL BASED ON HER DISABILITY OF INFANCY

9. Claimant, BRITTANY FLEMMING, was born on March 28, 1993 and was 15 years old at the time of the accident.

10. Under CPLR 208, a claimant is entitled to a toll of the statute of limitations based on infancy. The toll extends the time within which the action must be commenced to three (3) years after the disability ceases. This toll for infancy is also applicable to toll the time within which a court may grant a claimant leave to file a late notice of claim. See Cohen v. Pearl River Union Free Sch. Dist., 51 N.Y.2d 256 (1980).

11. Because Claimant, BRITTANY FLEMMING was an infant at the time of the accident, and the present date is still within the three (3) years after which her disability ceased, this Court has the discretion to grant claimant permission to file late notice of claim against COUNTY OF ERIE.

II: CLAIMANT MADE AN EXCUSABLE ERROR CONCERNING THE IDENTITY OF THE PUBLIC CORPORATION AGAINST WHICH A CLAIM SHOULD BE ASSERTED

12. As detailed in the "Facts" section above, Claimants erroneously under-identified the public corporations involved in this incident.

13. Within the statutory period Claimants served a Notice of Claim upon two of the three public corporations involved, but failed to serve a Notice of Claim upon the third public corporation involved.

14. The case at bar is factually similar to the Fourth Department in Nickerson v. County of Jefferson, 199 A.D.2d 1070 (4th Dept. 1993). In that case the Appellate Division reversed an order denying plaintiff's motion for permission to file a late notice of claim pursuant to General Municipal Law §50-e(5). The Court held that the defendant had knowledge of the essential facts constituting the claim within the statutory period; part of the reason for the failure to file a timely notice of claim was claimant's erroneous identification of the governmental entity involved; and the County failed to demonstrate that it suffered prejudice by reason of the failure to file a timely notice of claim. Here the City of Buffalo, a temporarily collaborator with the County, had actual timely notice, and conducted a 50-h Hearing on October 30, 2008.

15. Claimants' error in failing to identify the COUNTY OF ERIE as an involved entity was therefore excusable and should not prevent them from serving a Notice of Claim on the COUNTY OF ERIE. See Nickerson v. County of Jefferson, 199 A.D.2d 1070 (4th Dept. 1993).

**IV: RESPONDENT CANNOT DEMONSTRATE THAT IT SUFFERED ANY
PREJUDICE.**

16. Along with the City of Buffalo, Erie County was allegedly responsible for co-maintenance of the property at 1171 East Lovejoy Street. The incident in question was witnessed by several City Employees and Plaintiff filed a timely Notice of Claim with the City of Buffalo and The City of Buffalo Department of Public Works. Claimant did put both the City of Buffalo and the City of Buffalo Department of Public Works on notice of this incident within the ninety (90) day period under §50-e of the General Municipal Law. Therefore, the City was on actual notice of the claim and had ample opportunity to investigate the claims. See

Nickerson v. County of Jefferson, 199 A.D.2d 1070 (4th Dept. 1993); Gilbert v. Eden Central School District, 306 A.D.2d 925 (4th Dept. 2003); Vasquez v. City of Newburgh, 35 A.D.3d 621 (2nd Dept. 2006); Miranda v. New York City Transit Authority, 262 A.D.2d 199 (1st Dept. 1999); and McAdams v. Poice Department of the Town of Clarkstown, 184 A.D.2d 847 (3rd Dept. 1992).

17. Furthermore, because City of Buffalo and Erie County were both parties responsible for co-maintaining the property at 1171 East Lovejoy Street, City of Buffalo, Erie County was on constructive notice of the claim upon City of Buffalo's receipt of Plaintiffs' Notice of Claim and had knowledge of the essential facts constituting the claim within the statutory period, and therefore had sufficient notice under §50-e of the General Municipal Law.

18. Since the City of Buffalo, who is jointly responsible for maintaining the property had an opportunity to investigate the claim, and since Respondent, COUNTY OF ERIE, clearly had notice of this accident, COUNTY OF ERIE cannot claim any substantial prejudice in maintaining a defense in this action.

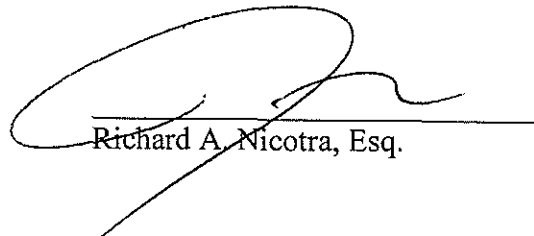
CONCLUSION

19. A copy of the Claimant's proposed Claim is annexed hereto as **Exhibit D**.

20. There has been no previous application for the relief sought herein.

WHEREFORE, your deponent respectfully requests that this Court grant an Order permitting the Claimant to serve a late Notice of Claim upon Respondent COUNTY OF ERIE, and for such other further and different relief as the court deems just and proper.

Dated: April 25, 2012
Buffalo, New York


Richard A. Nicotra, Esq.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JOANNE BATCH AS PARENT AND
GUARDIAN OF BRITTANY FLEMING, AN INFANT
AND BRITTANY FLEMMING,

Claimants,

AFFIDAVIT OF SERVICE

vs.

Index No. I2012-958

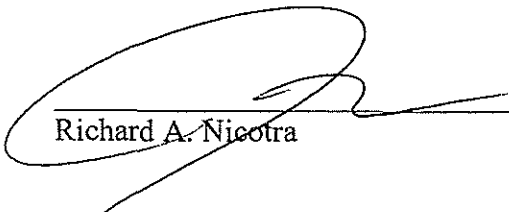
CITY OF BUFFALO
CITY OF BUFFALO, DEPARTMENT OF PUBLIC WORKS,
PARKS AND STREETS

Respondants.

I, Richard A. Nicotra, affirm pursuant to CPLR §2106, that the within Notice of Motion was this date mailed to all parties shown below at their respective addresses:

COUNTY OF ERIE DEPARTMENT OF LAW
95 Franklin Street, Suite 1634
Buffalo, New York 14202

Dated: April 25, 2012
Buffalo, New York


Richard A. Nicotra

Sworn to before me this
_____ day of _____, 2012

Notary Public

STATE OF NEW YORK
SUPREME COURT: ERIE COUNTY

JOANNE BATCH AS PARENT AND
GUARDIAN of BRITTANY FLEMMING, AN INFANT

Claimant,

NOTICE OF CLAIM

vs.

CITY OF BUFFALO
CITY OF BUFFALO, DEPARTMENT OF PUBLIC WORKS,
PARKS AND STREETS

Respondents.

PLEASE TAKE NOTICE, that Claimant, JOANNE BATCH P/N/G OF BRITTANY FLEMMING, AN INFANT, hereby intends to file a claim against the CITY OF BUFFALO, and/or CITY OF BUFFALO, DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS, and in support of said claim state the following:

1. The Post Office address of the Claimant is 354 Davey Street, Buffalo, NY 14206.
2. The attorneys for the Claimant are Andrews, Bernstein & Maranto, LLP, 69 Delaware Avenue, Suite 1200, Buffalo, New York 14202, Telephone (716) 842-2200.
3. The Claim arose as follows: On or about March 1, 2008, Infant Claimant, Brittany Fleming was walking out of Lovejoy Pool when she was caused to slip and fall down the inside stairs upon puddles of water.
4. This incident was caused by the negligence, carelessness, and recklessness on the part of the CITY OF BUFFALO, and/or CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS and/or their agents, servants and/or employees as follows:
 - a. Negligently failing to maintain the premises in a reasonable and safe condition;
 - b. Negligent in creating and/or maintaining a dangerous and hazardous condition on the premises;
 - c. Negligently failing to warn the Claimant of the dangerous and

hazardous conditions in the subject area;

- d. Negligently failing to recognize a known hazardous condition;
- e. Negligently failing to take proper measures to correct the dangerous condition in the subject area; and
- f. Negligently failing to provide proper supervision in the subject area.
- g. Negligently hiring and training of Parks Department employees.

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 the CITY OF BUFFALO, and/or CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS claimant BRITTANY FLEMING, was caused to suffer serious, significant and permanent injuries from this incident, including a Thumb Fracture and Scaphoid Fracture. 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 CITY OF BUFFALO, and/or CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS, Claimant has also incurred hospital and medical expenses, and other necessary related expenses, the amount of which is undetermined to date.

WHEREFORE, claimant requests that the CITY OF BUFFALO, and/or CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS compensate Claimant, BRITTANY FLEMING, for her injuries.

Dated: Buffalo, New York
May 5, 2008

Yours, etc.,

By: 

Richard A. Nicotra, Esq.

ANDREWS, BERNSTEIN & MARANTO, LLP

Attorney for the Plaintiffs

69 Delaware Avenue, Suite 1200

Buffalo, New York 14202

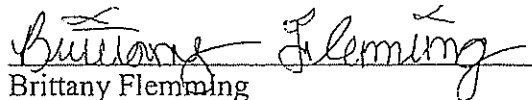
(716) 842-2200

VERIFICATION

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

JOANNE BATCH P/N/G of BRITTANY FLEMMING, being duly sworn, depose and say that they are the Claimant in this action for; that they have read the foregoing Notice of Claim in this action 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 that as to those matters, they believe them to be true.


Joanne Batch P/N/G of Brittany Flemming


Brittany Flemming

Sworn to before me this 7th

day of May, 2008


Notary Public

SHERITA PRUITT
No. 01PR6129482
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 27, 2009

Andrews, Bernstein & Maranto, LLP

Attorneys and Counselors at Law
69 Delaware Avenue, Suite 1200
Buffalo, New York 14202

Tel: (716) 842-2200
Fax: (716) 847-1134

Benjamin J. Andrews
Robert J. Maranto, Jr.
Richard A. Nicotra
Andrew D. Fanizzi
Andrew J. Connelly

Of Counsel
Alan L. Bernstein
Paul K. Barr

May 8, 2008

Certified Mail

City of Buffalo
Attention: Legal Department
1100 City Hall
Buffalo, New York 14202

Re: Joanne Batch as Parent and Guardian of Brittany Flemming, An
Infant v. City of Buffalo, City of Buffalo, Department of Public
Works, Parks and Streets

To Whom It May Concern:

Enclosed herewith, please find a Notice of Claim with regard to the above mentioned case.

Should you have any further questions, please feel free to contact my office.

Very truly yours,

ANDREWS, BERNSTEIN & MARANTO, LLP

Richard A. Nicotra, Esq.

RAN/tas

Andrews, Bernstein & Maranto, LLP

Attorneys and Counselors at Law
69 Delaware Avenue, Suite 1200
Buffalo, New York 14202

Tel: (716) 842-2200
Fax: (716) 847-1134

Benjamin J. Andrews
Robert J. Maranto, Jr.
Richard A. Nicotra
Andrew D. Fanizzi
Andrew J. Connelly

Of Counsel
Alan L. Bernstein
Paul K. Barr

May 8, 2008

Certified Mail

Department of Public Works
City Hall
65 Niagara Square
Room 502
Buffalo, New York 14202

Re: Joanne Batch as Parent and Guardian of Brittany Flemming, An
Infant v. City of Buffalo, City of Buffalo, Department of Public
Works, Parks and Streets

To Whom It May Concern:

Enclosed herewith, please find a Notice of Claim with regard to the above mentioned case.

Should you have any further questions, please feel free to contact my office.

Very truly yours,

ANDREWS, BERNSTEIN & MARANTO, LLP

Richard A. Nicotra, Esq.

RAN/tas

STATE OF NEW YORK
SUPREME COURT: ERIE COUNTY

JOANNE BATCH AS PARENT AND
GUARDIAN of BRITTANY FLEMMING, AN INFANT

Claimant,

NOTICE OF CLAIM

vs.

CITY OF BUFFALO
CITY OF BUFFALO, DEPARTMENT OF PUBLIC WORKS,
PARKS AND STREETS,
COUNTY OF ERIE

Respondents.

PLEASE TAKE NOTICE, that Claimant, JOANNE BATCH P/N/G OF BRITTANY FLEMMING, AN INFANT, hereby intends to file a claim against the CITY OF BUFFALO, CITY OF BUFFALO, DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS, and/or ERIE COUNTY and in support of said claim state the following:

1. The Post Office address of the Claimant is 354 Davey Street, Buffalo, NY 14206.
2. The attorneys for the Claimant are Andrews, Bernstein & Maranto, LLP, 69 Delaware Avenue, Suite 1200, Buffalo, New York 14202, Telephone (716) 842-2200.
3. The Claim arose as follows: On or about March 1, 2008, Infant Claimant, Brittany Fleming was walking out of Lovejoy Pool when she was caused to slip and fall down the inside stairs upon puddles of water.
4. This incident was caused by the negligence, carelessness, and recklessness on the part of the CITY OF BUFFALO, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS, and/or ERIE COUNTY and/or their agents, servants and/or employees as follows:
 - a. Negligently failing to maintain the premises in a reasonable and safe condition;
 - b. Negligent in creating and/or maintaining a dangerous and hazardous condition on the premises;
 - c. Negligently failing to warn the Claimant of the dangerous and

hazardous conditions in the subject area;

- d. Negligently failing to recognize a known hazardous condition;
- e. Negligently failing to take proper measures to correct the dangerous condition in the subject area; and
- f. Negligently failing to provide proper supervision in the subject area.
- g. Negligently hiring and training of Parks Department employees.

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 the CITY OF BUFFALO, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS, and/or ERIE COUNTY claimant BRITTANY FLEMING, was caused to suffer serious, significant and permanent injuries from this incident, including a Thumb Fracture and Scaphoid Fracture. 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 CITY OF BUFFALO, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS, and/or ERIE COUNTY, Claimant has also incurred hospital and medical expenses, and other necessary related expenses, the amount of which is undetermined to date.

WHEREFORE, claimant requests that the CITY OF BUFFALO, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS AND STREETS, and/or ERIE COUNTY compensate Claimant, BRITTANY FLEMING, for her injuries.

Dated: Buffalo, New York
April 25, 2012

Yours, etc.,

By:

Richard A. Nicotra, 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 :

JOANNE BATCH P/N/G of BRITTANY FLEMMING, being duly sworn, depose and say that they are the Claimant in this action for; that they have read the foregoing Notice of Claim in this action 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 that as to those matters, they believe them to be true.

Joanne Batch P/N/G of Brittany Flemming

Brittany Flemming

Sworn to before me this____

day of _____, 2012

Notary Public



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

April 30, 2012

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 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>Keim, Alice M. and Kuntz, George, Individually and as Administrators of the Estate of Keim, Angela, a Minor</i>
Document Received:	Notice of Claim
Name of Claimant:	Alice M. Keim 4525 Mt. Vernon Boulevard Hamburg, New York 14075 and George Kuntz 136 Center Street Lackawanna, New York 14208
Claimant's attorney:	Daniel J. Chiacchia, Esq. Chiacchia & Fleming, LLP 5113 South Park Avenue Hamburg, New York 14075 and Aaron F. Glazier, Esq. Gibson, McAskill & Crosby 69 Delaware Avenue, Suite 900 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP/dld

Enc.

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
ALICE M. KEIM and GEORGE KUNTZ,
Individually and as Administrators of the
Estate of ANGELA KEIM, a Minor.

This paper received at the
Erie County Attorney's Office
from Daniel Chiacchia
the 26 day of April, 2012
at 11:24 a.m.
Kelly Brunkworth
Assistant County Attorney

Claimants,

NOTICE OF CLAIM

vs.

COUNTY OF ERIE and TOWN OF COLLINS

Defendants.

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

TOWN OF COLLINS
14093 Mill Street, Box 420
Collins, New York 14034

PLEASE TAKE NOTICE, that in accordance with the requirements of New York General Municipal Law §50-e the Claimants, ALICE M. KEIM and GEORGE KUNTZ, Individually and as Administrators of the Estate of ANGELA KEIM, a Minor, claim and demand the following against the Defendants, COUNTY OF ERIE and TOWN OF COLLINS:

1. The names and post office addresses of the Claimants are:

ALICE M. KEIM
4525 Mt. Vernon Blvd.
Hamburg, New York 14075

GEORGE KUNTZ
136 Center Street
Lackawanna, New York 14218

The name and post office addresses of the Claimants attorneys are:

DANIEL J. CHIACCHIA, ESQ.
CHIACCHIA & FLEMING, LLP
5113 South Park Avenue
Hamburg, New York 14075

AARON F. GLAZER, ESQ.
GIBSON, MCASKILL & CROSBY
69 Delaware Avenue, Suite 900
Buffalo, New York 14202

2. ALICE M. KEIM and GEORGE KUNTZ are the parents and natural guardians of ANGELA KEIM, a decedent minor.

3. This claim is for wrongful death, personal injuries and economic loss sustained through the negligence and violations of the Defendants, COUNTY OF ERIE and TOWN OF COLLINS, their employees, agents and servants.

4. The date, time and place where this claim arose are as follows: at approximately 4:30 a.m. on January 28, 2012 on Versailles Plank Road at or near its intersection with Snow Road on the Cattaraugus Indian Reservation, County of Erie and State of New York.

5. ANGELA KEIM was a passenger in a motor vehicle which was owned and being operated by Bradley V. Maloney when Mr. Maloney lost control of said vehicle and it left the road, went down an embankment some 50 feet down into a ravine, causing serious personal injuries and wrongful death as to ANGELA KEIM.

6. The accident took place at the above-mentioned location which the Defendants, COUNTY OF ERIE and TOWN OF COLLINS, knew to be dangerous, unsafe and defective but nonetheless failed in their individual duties to study, improve, change, alter, maintain or otherwise make safe. Through the negligence, carelessness, and statutory violations of the Defendants, COUNTY OF ERIE and TOWN OF COLLINS, in maintaining, designing, keeping and constructing the road referenced above, the motor vehicle accident occurred causing serious personal injuries and wrongful death as to ANGELA KEIM.


7. ANGELA KEIM was caused to suffer serious injuries and wrongful death, pain and suffering and economic damages as a direct and proximate result of the aforesaid negligence and failures of the Defendants, COUNTY OF ERIE and TOWN OF COLLINS.

8. Claimants ALICE M. KEIM and GEORGE KUNTZ have been caused to suffer damages, including but not limited to, economic damages for medical expenses, burial expenses and loss of wages as they were required to take time off from work to grieve for their daughter, mental anguish, out-of-pocket expenses and loss of society and companionship of their daughter as a direct and proximate result

of the aforesaid negligence and failures of the Defendants, COUNTY OF ERIE and TOWN OF COLLINS.

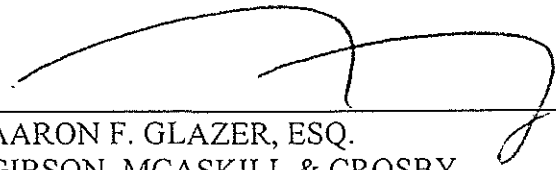
WHEREFORE, the Claimants ALICE M. KEIM and GEORGE KUNTZ, Individually and as Administrators of the Estate of ANGELA KEIM, a Minor, hereby claim and demand judgment for monetary damages the Defendants, COUNTY OF ERIE and TOWN OF COLLINS by reason of the wrongful, unlawful, negligent and careless acts and omissions of the Defendants, their employees, agents and servants.

DATED: April 24, 2012
Buffalo, New York



DANIEL J. CHIACCHIA, ESQ.
CHIACCHIA & FLEMING, LLP
Attorney for Claimants

ALICE M. KEIM and GEORGE KUNTZ,
Individually and as Administrators of the Estate of
ANGELA KEIM, a Minor,
5113 South Park Avenue
Hamburg, New York 14075
(716) 648-3030




AARON F. GLAZER, ESQ.
GIBSON, MCASKILL & CROSBY
Attorney for Claimants

ALICE M. KEIM and GEORGE KUNTZ,
Individually and as Administrators of the Estate of
ANGELA KEIM, a Minor,
69 Delaware Avenue, Suite 900
Buffalo, New York 14202
(716) 856-4200

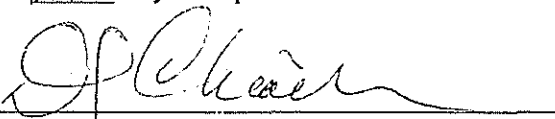
VERIFICATION

ALICE M. KEIM, being duly sworn, deposes and says:

I am the Claimant above named; I have read the foregoing Notice of Claim and know its contents; the same is true to my own knowledge, except as to those matters therein stated to be alleged on information and belief, and, as to those matters, I believe it to be true.


ALICE M. KEIM

Subscribed and sworn to before me
this 24th day of April 2012.


Notary Public

DANIEL J. CHIACCHIA
Notary Public, State of New York
Qualified in Erie County
Commission Expires June 1, 20 14

VERIFICATION

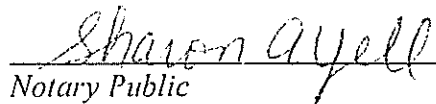
GEORGE KUNTZ, being duly sworn, deposes and says:

I am the Claimant above named; I have read the foregoing Notice of Claim and know its contents; the same is true to my own knowledge, except as to those matters therein stated to be alleged on information and belief, and, as to those matters, I believe it to be true.



GEORGE KUNTZ

Subscribed and sworn to before me
this 23rd day of April 2012.



Notary Public

SHARON A. YELL
Notary Public State of New York
Qualified in Erie County
My Commission Expires: Nov. 25, 2014

