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COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

MEMORANDUM

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

FROM: Jeremy C. Toth, First Assistant County Attorney

DATE: January 10, 2023

RE: Transmittal of New Claims Against Erie County

JCT/real

Mr. Graber:

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

Claim Name

1. Antwan Green v. County of Erie;
2. Destiny Renczkowski v. County of Erie;
3. Jane Doe v. Sheriff Howard, et al.;
4. Zackery Smith, et al. v. Deputy Mohawk, et al.;
5. Unique Rogers v. Erie County DA's Office, et al.;
6. Londarr Ward v. County of Erie;
7. Occhino Corp. v. County of Erie;
8. Diane & Raymond Lechowicz v. County of Erie;
9. Kevin Jester v. County of Erie, et al.;
10. Anderson Maxwell v. ECSO, et al.;
11. Karra Barrett/Bradley Barrett v. County of Erie, et al.;
12. Catherine Forbush v. ECMCC, et al.;
13. Jodie Scherrer v. County of Erie; and
14. Shane Gravelle v. County of Erie



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 3, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Green, Antwan M. v. County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	Antwan M. Green 21-B-0774 Fishkill Correctional Facility Box 1245 Beacon, New York 12508
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

COMM. 2D-4

UNITED STATES DISTRICT COURT
for the
Western District of New York

Antwan M. Green

Plaintiff(s)

v.

County of Erie, et al.

Defendant(s)

Civil Action No. 6:21-CV-6335-EAW

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* County of Erie
Edward A. Rath County Office Bldg
95 Franklin Street
Buffalo, NY 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:

Antwan M. Green, 21-B-0774
FISHKILL CORRECTIONAL FACILITY
Box 1245
Beacon, NY 12508

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



Signature of Clerk or Deputy Clerk

Date: 10/25/2022



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 4, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Renczkowski, Destiny v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Destiny Renczkowski 54 Baitz Avenue Buffalo, New York 14206
Claimant's attorney:	Denis J. Bastible, Esq. Cellino Law, LLP 800 Delaware Avenue Buffalo, New York 14209

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

COMM. 2D-4

This paper received at the
Erie County Attorney's Office
from Joseph Sanalish
the 3rd day of November, 2022
at 3:27 a.m./p.m.
Assistant County Attorney

STATE OF NEW YORK
COUNTY OF ERIE

DESTINY RENCZKOWSKI

Claimant,

NOTICE OF CLAIM

v.

Index No.:

COUNTY OF ERIE

Respondent,

PLEASE TAKE NOTICE, that the above-named Claimant claims and demands from the Respondent, COUNTY OF ERIE, recompense for personal injuries and damages sustained by Claimant by reason of the wrongful, negligent and careless acts and omissions of the Respondent, its agents, servants and/or employees, and in support thereof, the Claimant states:

1. The Claimant's address is 54 Baitz Avenue, Buffalo, NY 14206.
2. The Claimant is represented by Cellino Law, LLP. with offices located at 800 Delaware Avenue, Buffalo, New York 14209, telephone (800) 555-5555.
3. On or about August 8, 2022, the Claimant was receiving dental wisdom teeth removal treatment at the Erie County Medical Center Dental Clinic located at 462 Grider Street, in Buffalo, New York. During the course of the scheduled procedure, the Dental Clinic employee was utilizing a dental drill which, for some reason, overheated and burned Claimant's lips.

4. As a result of the aforementioned incident, Claimant sustained physical injuries which included a burned lower lip and burns to the left side of the upper lip and required Claimant to receive medical treatment. Currently, the full extent of Claimant's injuries and whether Claimant will suffer permanent scarring is not yet known.

5. It is alleged that the Respondent, through its agents, servants and employees, was negligent in the use of the aforementioned dental drill and it is alleged that this negligent by Respondent contributed to the incident of August 8, 2022.

6. By virtue of the negligence of the employees, agents and/or servants of Respondent, Claimant has incurred medical expenses which, to date, are undetermined and may have sustained permanent scarring to her upper and lower lips.

7. Upon information and belief, Claimant will be obligated to incur further medical expenses, the amount of which cannot be reasonably calculated at this time.

TAKE NOTICE that Claimant demands payment of this claim as set forth above.

DATED: Buffalo, New York
October 31, 2022

Yours, etc.,

CELLINO LAW LLP

By: 

Denis J. Bastible, Esq.
Attorneys for Plaintiff
800 Delaware Avenue
Buffalo, NY 14209
(800) 555-5555

VERIFICATION

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

DESTINY RENCZKOWSKI, being duly sworn, deposes and says that the Deponent is the Claimant 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.



DESTINY RENCZKOWSKI

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

On the 3rd day of November, in the year 2022 before me, the undersigned, personally appeared DESTINY RENCZKOWSKI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in his capacity and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public/Commissioner of Deeds

JOSEPH PAUL SANABRIA
No. 01SA6211924
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 09/28/2025



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 7, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Doe, Jane v. Sheriff Howard, Superintendent Diina and Robert Dee</i>
Document Received:	Amended Summons and Complaint
Name of Claimant:	Jane Doe – alleged victim of sexual assault; no other identifiers provided
Claimant's attorney:	Melissa D. Wischerath, Esq. Lipsitz Green Scime Cambria LLP 42 Delaware Avenue, Suite 120 Buffalo, New York 14202-3924

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

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

UNITED STATES DISTRICT COURT

for the

Western District of New York

JANE DOE

Plaintiff,

v.

ERIE COUNTY, et al.

Defendants.

Civil Action No. 22-cv-815

AMENDED SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

ERIE COUNTY
95 Franklin Street
Buffalo, New York 14202

This paper received at the
Erie County Attorney's Office
from Ryan McLaughlin on
the 4th day of Nov, 2022
at 12:03 a.m./p.m.

A lawsuit has been filed against you.

Assistant County Attorney

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:

Lipsitz Green Scime Cambria, LLP (Melissa D. Wischerath, Esq.)
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
Tel: 716-849-1333

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

Date: 11/03/2022



CLERK OF COURT

Mary Choewenguth
Signature of Clerk or Deputy Clerk

Mary Choewenguth

COMM. 2D-4

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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:

Melissa D. Wischerath
Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202
(716) 849-1333
mwischerath@lglaw.com

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JANE DOE

Plaintiff,

v.

ERIE COUNTY,
TIMOTHY B. HOWARD, Individually and in
his capacity of Sheriff of Erie County, New
York;
THOMAS DIINA, Superintendent of The Jail
Management Division, and
ROBERT M. DEE, Erie County Sheriff's
Office Deputy at Erie County Holding Center

Defendants.

AMENDED COMPLAINT

Case No.:

JURY TRIAL REQUESTED

Plaintiff, JANE DOE, by and through her attorneys, Lipsitz Green Scime Cambria, LLP, as
and for her Complaint, hereby allege as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action brought under 42 U.S.C. §1983 against officials of the
Erie County Holding Center "holding center", who violated the rights of a female inmate by
sexually assaulting her and acting with deliberate indifference to allow that abuse. Erie County
Holding Center, Erie County Sheriff's Office, Erie County, former Erie County Sheriff Timothy B.

Howard, and Thomas Diina, Superintendent of The Jail Management Division, knew of the imminent threat of sexual assault to Plaintiff and deliberately failed to protect her.

2. Under the New York Penal Law, an inmate can never consent to sexual activity with an officer. *See* N.Y. Penal Law §130.05. Nonetheless, Defendants cultivated a culture that allowed male staff to prey on female inmates to satisfy their sexual desires.

3. The multiple sexual assaults of the Plaintiff could have been prevented. Defendants', including both administrators and deputies, knew of the danger facing female inmates. They knew that multiple sexual assaults had occurred in their facilities. They knew individual detainees were complaining of sexual assaults that were "unsubstantiated" because the victims were routinely and unfairly discredited based solely on their status as inmates/detainees. In some cases, they knew of and tolerated, turning a blind eye, to inappropriate relationships between officers and detainees, including marriage between deputies and former inmates.¹ They knew that policies needed to be corrected and how to fix them, which recently resulted in a settlement agreement² between the state and county.

4. The 2022 agreement forced the Erie County Sheriff's Office to follow mandated procedures to timely and effectively address allegations of sexual misconduct between correction officers and incarcerated individuals at the Erie County Holding Center and the Erie County Correctional Facility, resolving a March 2021 lawsuit filed by Attorney General James on behalf of the New York State Commission of Correction (SCOC) against Erie County and Erie County Sheriff Timothy Howard. The 2021 lawsuit identified several instances when Sheriff Howard refused to comply with directives requiring his office to timely report allegations of sexual

¹ Grand jury indicts suspended jail deputy, alleges sexual contact with inmate, other domestic episodes (buffalonews.com) last accessed on October 8, 2022.

² https://ag.ny.gov/sites/default/files/803433_2021_judgment_to_court_9.pdf last accessed on October 18, 2022.

misconduct in the facilities to the SCOC, and, in many cases, doing so only after the allegations surfaced in media reports. Attorney General James also found that the Erie County Sheriff's Office conducted insufficient investigations into several of the incidents by neglecting to interview witnesses, evaluate all available evidence, or refer the matters for criminal investigation.³

5. The Erie County Holding Center, Erie County Sheriff's Office, Erie County, former Erie County Sheriff Timothy B. Howard, and Thomas Diina, Superintendent of The Jail Management Division, and their supervisory agents, nonetheless chose not to act, allowing these sexual assaults to occur and continue.

6. JANE DOE now sues under the Fourteenth and/or Eighth Amendments to the United States Constitution, 42 U.S.C. §1983, and New York common law to recover damages for the harm caused by the sexual abuse while a detainee/inmate.

JURISDICTION AND VENUE

7. Subject matter jurisdiction over the federal constitutional and statutory claims is proper in this Court pursuant to 28 U.S.C. §1331. This court has jurisdiction to order nominal, compensatory and punitive damages, attorneys' fees, and injunctive and declaratory relief pursuant to 28 U.S.C. §2201 and 42 U.S.C. §§1983 and 1988.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2) because the events giving rise to the claim occurred inside the Western District of New York.

9. The Erie County Sheriff's Office and/or Erie County operates the Erie County Holding Center, which is the location of the incidents described herein.

10. Erie County Holding Center is in the Western District of New York.

³ <https://ag.ny.gov/press-release/2021/attorney-general-james-forces-erie-county-sheriff-address-rampant-sexual> last accessed on October 18, 2022.

PARTIES

I. PLAINTIFF

11. Plaintiff, JANE DOE, was, at all relevant times, a female detainee under the direct control and supervision of the Defendants.

12. Plaintiff, JANE DOE, is no longer in custody and now resides in Cheektowaga, New York. During the relevant time periods, JANE DOE was housed at the Erie County Holding Center.

13. Plaintiff, JANE DOE, was, at all relevant times, participating in a supervised drug rehabilitation program and is bi-polar, and thus a qualified individual with a disability.

II. DEFENDANTS

14. Defendant, ERIE COUNTY, is a governmental subdivision created under the laws of the State of New York. Erie County is charged by the laws of the State of New York with authority to maintain the Erie County Holding Center.

15. Defendant, TIMOTHY B. HOWARD, was at all relevant times the Erie County Sheriff. TIMOTHY B. HOWARD is sued in his individual and official capacity. As Sheriff, he is charged with custody of the Erie County Holding Center pursuant to New York laws and regulations.

16. Defendant, THOMAS DIINA, was at all relevant times the Superintendent of the Jail Management Division. THOMAS DIINA is sued in his individual and official capacity.

17. Defendant, ROBERT M. DEE, was at all relevant times an Erie County Sheriff Deputy at the Erie County Holding Center. ROBERT M. DEE is sued in his individual and official capacity.

FACTUAL ALLEGATIONS

I. General Allegations Regarding the Treatment of Women Prisoners in New York State

18. ERIE COUNTY operates the ERIE COUNTY HOLDING CENTER that houses male and female adults, many of whom have not been convicted of a crime.

19. ERIE COUNTY HOLDING CENTER is a pretrial, maximum-security detention facility with a total capacity of 638 inmates. It is the second largest detention facility in New York State.

20. New York has zero tolerance for sexual offenses committed against any incarcerated individual. State law deems persons in the custody of a state or local correctional facility “incapable of consent” to sexual conduct with facility employees, see N.Y. Penal Law § 130.05(3)(e)–(f), and subjects guards to criminal liability for such conduct, see, e.g., id. §§ 130.25(1), 130.60(1). These laws acknowledge that any sexual contact between a prison official and a prisoner is deemed non-consensual due to the inherent power differential between guards and prisoners.

21. As a general matter, inmates are required to follow directions or verbal commands given by the deputies. As described in further detail below, women at these facilities are routinely guarded by men working alone, including during overnight shifts in the women’s units.

22. A female inmate who does not obey a direct order by a male correction officer can be “written up” or subject to discipline.

23. In holding centers, the “lockdown” refers to a period during the day when all movement within the prison is stopped and prisoners are confined to their cells.

24. “Grooming” is a term used by social scientists to refer to the process by which a person intent on engaging in illegal sexual activity, such as with a child or with a detainee, gains trust from a vulnerable victim to gain sexual access to the victim without the victim revealing the sexual contact to someone who might prevent it.

25. Male deputies’ intent on engaging in sexual contact with female inmates/detainees frequently groom their victims by spending time speaking to them, allowing them to break seemingly arbitrary or minor prison rules, and providing them material gifts that make them more comfortable in prison, which can range from soap to increased pay. Female detainees are sometimes temporarily deceived into believing that such contact is consistent with a normal romantic relationship when it is a ploy to permit staff to engage in illegal sexual activity.

26. The Prison Rape Elimination Act (“PREA”) is a 2003 federal law aimed at preventing rape and sexual abuse at prisons. Detailed regulations are in place pursuant to PREA and PREA audits are required at least once every three years. A “PREA complaint” refers to a complaint regarding sexual misconduct inside a prison.

27. Defendant, THOMAS DIINA, as Superintendent of Jail Management Division, at all relevant times, has responsibility for, among other things, investigating and reporting allegations of sexual assault.

II. The Specific Sexual Assaults of Plaintiff

28. Beginning in approximately March of 2019 JANE DOE, was incarcerated in the Erie County Holding Center, multiple times, oftentimes relating to drug court violations.

29. In or about October of 2019, JANE DOE, was first sexually assaulted by ROBERT M. DEE, when he repeatedly and forcibly began kissing her and touching, sucking, and licking JANE DOE’s breasts.

30. From approximately October of 2019 through November 20, 2019, ROBERT M. DEE, would grind his genitals up against JANE DOE's backside on numerous occasions.

31. While the facility was in "lockdown", ROBERT M. DEE, took JANE DOE, into a short block twice and ordered her to masturbate in front of him.

32. One day, when ROBERT M. DEE took JANE DOE to do some work preparing for a painting job, she invited him to touch her in a private place, and he did. Jane Doe then undid his belt, but he stopped her, saying they would have to wait until she was "on the outside" to go further. They never did see one another after her release, though he attempted to contact her.

33. Inmates are paid for their work, and one day JANE DOE was paid more money than she expected in her account. ROBERT M. DEE told JANE DOE the extra money was for the "you and me stuff," and she shouldn't mention it to other inmates.

34. Following JANE DOE's release from Erie County Holding Center, ROBERT M. DEE, attempted to contact her.

35. Although she is no longer incarcerated, JANE DOE, suffers from anxiety and flashbacks.

36. As a result of the sexual abuse, JANE DOE, suffers from depression and Post-Traumatic Stress Disorder ("PTSD") and has been medicated by a mental health specialist to treat those conditions.

III. Defendants, Erie County, Timothy B. Howard, Former Erie County Sheriff; And Thomas Diina, Superintendent of The Jail Management Division, By Their Actions and Failure to Act Created an Environment in Correction Facilities Where Sexual Abuse by Staff Was Frequent and Predatory Behavior by Correction Officers/Guards Was Not Deterred.

37. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were responsible for preventing sexual abuse by guards against detainees, including the Plaintiff.

38. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were on notice of the serious risk of sexual abuse by male guards faced by Plaintiff and other female detainees incarcerated at the Erie County Holding Center.

39. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, failed to enact and enforce policies, including reporting requirements, that would have prevented Defendant, ROBERT M. DEE, from sexually assaulting the Plaintiff.

A. Defendants Erie County, Timothy B. Howard, Former Erie County Sheriff; And Thomas Diina, Superintendent of The Jail Management Division, Were Responsible for Preventing Sexual Abuse of Inmates

40. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were at all relevant times responsible for creating and enacting policies and procedures to protect the safety of detainees incarcerated at the Erie County Holding Center and ensuring that the policies and practices are enforced.

41. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, failed to implement policies or procedures to protect detainees from sexual abuse at their facility.

42. Despite repeated instances of officer sexual abuse of detainees at Erie County Holding Center, Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, failed to enact or enforce policies to correct the prevalence of abuse at the Erie County Holding Center.

B. Defendants Erie County, Timothy B. Howard, Former Erie County Sheriff; And Thomas Diina, Superintendent of The Jail Management Division, Were Aware of The Substantial Risks of Sexual Abuse Faced by Female Prisoners

43. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were aware that the risk and numerous incidents of sexual abuse of female detainees at the hands of male prison guards led the federal government to enact statutes criminalizing any sexual

contact between prisoners and prison guards/staff.

44. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were aware that in New York the risk and numerous incidents of sexual abuse of female inmates at the hands of male prison guards/staff led to the criminalization of any sexual contact between prisoners and correctional staff in the enactment of N.Y. Penal Law §130.05(3)(e), which deems persons in the custody of a state or local correctional facility “incapable of consent” to sexual conduct with facility employees, see N.Y. Penal Law § 130.05(3)(e)–(f), and subjects guards to criminal liability for such conduct, see, e.g., id. §§ 130.25(1), 130.60(1).

45. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, knew that the actual number of sexual assaults in the Erie County Holding Center was much higher than reported.

46. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were aware the assigning male staff to guard female prisoners creates a risk of sexual assault.

47. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were aware that the risk and incidents of sexual abuse in a prison setting led to the promulgation of international standards prohibiting the assignment of male corrections staff to guard women prisoners. United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 53, adopted Aug. 30, 1955.

48. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, were aware that women prisoners were a more vulnerable population who faced an increased risk of sexual abuse by male officers. Incarcerated women have a higher percentage of a history of sexual and physical abuse compared to male prisoners or to women who have never been incarcerated.

49. Victims of sexual abuse are generally unlikely to come forward with complaints of sexual misconduct due to embarrassment, humiliation, and a fear that their complaints will be met with cynicism.

50. The failure of Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, to implement and enforce policies and procedures that would prevent and punish all sexual misconduct contributes to a tolerant and permissive culture, which increases the risk of sexual abuse of women prisoners.

C. Defendants Erie County, Timothy B. Howard, Former Erie County Sheriff; And Thomas Diina, Superintendent of The Jail Management Division, Failed to Enact Supervisory Policies That Would Prevent Sexual Abuse by Male Staff and Failed to Enforce Existing Policies

51. Despite known risks and frequent incidents of sexual misconduct by Defendant, ROBERT M. DEE, Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, through their policies and procedures failed to protect the women prisoners in their custody from harm. Defendant, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, inadequately supervised ROBERT M. DEE, placing women prisoners at a heightened risk of sexual abuse.

52. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, failed to enact (or enforce) appropriate rules and policies concerning the behavior of male staff and failed to enforce existing rules and policies governing staff behavior.

53. Despite their knowledge of the risk of sexual assault in women's prisons, the Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, permitted the assignment of male guards, specifically ROBERT M. DEE, to posts which provided him with opportunities for unmonitored contact with female inmates, including the Plaintiff.

54. Allowing male staff long periods of unsupervised contact allows time for sexual abuse of female inmates and also promotes an environment where male staff can develop personal relationships with female inmates to groom and coerce them into sexual acts over time.

55. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, knew that changing policies and procedures to prohibit a single male staff member from watching female inmates for prolonged periods would reduce the risk of staff-inmate sexual abuse, but they chose not to implement that policy.

D. Defendants Erie County, Timothy B. Howard, Former Erie County Sheriff; And Thomas Diina, Superintendent of The Jail Management Division, Failed to Implement Policies for Staff to Carry Out Unannounced and Random Supervisory Rounds, Which Created Risk of Harm to Plaintiff and Led to Sexual Abuse

56. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, not only permitted a single male guard to be alone with female inmates for long periods of time but failed to enact and enforce adequate rules and policies to ensure that unannounced, random supervisory rounds were conducted, which would have alleviated the high risk of sexual abuse.

57. Supervisory rounds consist of a supervisor checking in on various posts throughout the facility to oversee prison guards/staff and ensure there is no problem. Random and unannounced supervisory rounds would deter guards from forming inappropriate relationships with female inmates or from sexually abusing them.

58. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, knew that in previous sexual abuses cases of female inmates, the lack of proper supervisory rounds had facilitated the sexual abuse.

59. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, failed to create or enforce policies that led to supervisory rounds being conducted without

notification to officers.

E. Defendants Erie County, Timothy B. Howard, Former Erie County Sheriff; And Thomas Diina, Superintendent of The Jail Management Division, Failed to Install or Cause the Monitoring of Existing Cameras to Prevent Sexual Abuse and Grooming of Inmates for Sexual Abuse.

60. To the extent, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, installed or required installation of surveillance cameras, use of those cameras for supervision was, at all relevant times, inadequate to protect female prisoners.

61. Upon information and belief, surveillance cameras were not installed throughout Erie County Holding Center. Many enclosed and isolated areas inside the prison, where sexual abuse is more likely to occur, or have been reported to have occurred, are outside of the any video or audio surveillance. These areas included elevators, hallways and in the “short block”.

62. Where surveillance cameras did exist, they were not adequately monitored, if at all.

63. Video camera footage was not monitored to detect or deter the formation of improper relationships by officers with inmates.

F. Defendants Erie County, Timothy B. Howard, Former Erie County Sheriff; And Thomas Diina, Superintendent of The Jail Management Division, Created A Culture Where Warning Signs of Sexual Abuse Were Ignored and Inappropriate Staff-Inmate Relationships Were Permitted.

64. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, failed to enact adequate rules and policies to monitor and discipline staff that were engaged in behavior that constituted warning signs of sexual abuse, such as spending a disproportionate amount of time talking to a particular prisoner, repeatedly requesting a particular prisoner for a specific assignment, discussing personal life with a prisoner, marrying a former prisoner, or asking a prisoner a personal question. Staff were not disciplined or counseled when supervisors witnessed behavior that was indicative of warning signs of sexual abuse.

65. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, created a culture of ignoring staff-inmate relationships by failing to investigate or discipline officers who knew of improper relationships between prison guards and inmates.

66. The lack of enforcement of these policies made it clear that prison staff was under no duty to report warnings signs of abuse of inappropriate staff-inmate relationships.

67. It was known to guards and staff that they would not get into trouble for failing to report an inappropriate staff-inmate relationship, encouraging a culture of silence.

68. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, created a culture of intimidation when they failed to provide inmates with a confidential way of reporting incidents of sexual abuse.

69. Plaintiff was aware that reporting what had happened to her could result in retaliation by the prison staff and other inmates, making the abuse she already suffered worse.

70. Plaintiff also knew that she was more likely to be disbelieved or discredited if she reported the sexual abuse and/or felt that her charges would be increased.

71. Defendants, ERIE COUNTY, TIMOTHY B. HOWARD and THOMAS DIINA, by failing to enact or enforce certain policies, they created a culture where female inmates were discouraged to report sexual abuse.

72. Inmates were made more vulnerable to coercion and manipulation by guards since they knew that a complaint about inappropriate behavior would be discouraged or discredited.

**FIRST CAUSE OF ACTION
CRUEL AND UNUSUAL PUNISHMENT
VIOLATION OF U.S. CONSTITUTION AMENDMENT VIII
(BY JANE DOE AGAINST ROBERT M. DEE)**

73. Paragraphs 1- 72 are hereby incorporated and realleged.

74. By forcibly touching, sucking, and licking JANE DOE's breasts, grinding his genitals into her back, and ordering her to masturbate in front of him, ROBERT M. DEE, acted willfully and wantonly for his own sexual gratification.

75. There was no penological justification for ROBERT M. DEE's conduct.

76. ROBERT M. DEE's conduct was unreasonable and in violation of JANE DOE's clearly established constitutional right to be free from cruel and unusual punishment.

77. ROBERT M. DEE's conduct constituted cruel and unusual punishment under the Fourteenth and/or Eighth Amendment of the U.S. Constitution.

78. JANE DOE suffered physical, emotional, and psychological pain and other damages as a result of this violation.

**SECOND CAUSE OF ACTION
SEXUAL ABUSE IN THE FIRST DEGREE
VIOLATION OF N.Y. PENAL LAW §130.65
(BY JANE DOE AGAINST ROBERT M. DEE)**

79. Paragraphs 1- 78 are hereby incorporated and realleged.

80. From approximately October of 2019 through November 20, 2019, ROBERT M. DEE, sexually assaulted JANE DOE, on numerous occasions by repeatedly and forcibly touching, sucking, and licking JANE DOE's breasts and grinding his genitals into her back and/or subjecting her to masturbation and bodily exposure.

81. Such acts violated N.Y. Penal Law §130.65.

82. JANE DOE suffered physical, emotional, and psychological pain and other damages as a result of this violation.

**THIRD CAUSE OF ACTION
NEW YORK COMMON LAW BATTERY
(BY JANE DOE AGAINST ROBERT M. DEE)**

83. Paragraphs 1- 82 are hereby incorporated and realleged.

84. The repeated sexual assaults by ROBERT M. DEE on JANE DOE constituted a battery upon JANE DOE in that the above-described bodily contact was intentional, unauthorized, and grossly offensive in nature.

85. JANE DOE suffered physical, emotional, and psychological pain and other damages as a result of this violation.

**FOURTH CAUSE OF ACTION
DELIBERATE INDIFFERENCE
VIOLATION OF U.S. CONSTITUTION AMENDMENT VIII
(BY JANE DOE AGAINST TIMOTHY B. HOWARD and THOMAS DIINA)**

86. Paragraphs 1- 85 are hereby incorporated and realleged.

87. Defendants, TIMOTHY B. HOWARD and THOMAS DIINA, were both personally aware of the imminent risk to JANE DOE posed by ROBERT M. DEE.

88. Defendants, TIMOTHY B. HOWARD and THOMAS DIINA, failed to take any steps to protect JANE DOE from ROBERT M. DEE.

89. As a result of Defendants, TIMOTHY B. HOWARD and THOMAS DIINA, failure to act, ROBERT M. DEE subjected JANE DOE to illegal sexual activity on numerous occasions after Defendants, TIMOTHY B. HOWARD and THOMAS DIINA learned of the risk to JANE DOE that ROBERT M. DEE posed.

90. JANE DOE suffered physical, emotional, and psychological pain and other damages as a result of this violation.

91.

**FIFTH CAUSE OF ACTION
DELIBERATE INDIFFERENCE
VIOLATION OF U.S. CONSTITUTION AMENDMENT VIII
(BY JANE DOE AGAINST ERIE COUNTY, TIMOTHY B. HOWARD)**

92. Paragraphs 1- 91 are hereby incorporated and realleged.

93. A municipality, such as the COUNTY AND/OR SHERIFF TIMOTHY B. HOWARD, may be held liable under § 1983 when its official policies or customs violate the Constitution. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

94. Defendants, COUNTY AND/OR TIMOTHY B. HOWARD, established, condoned, ratified, and/or encouraged customs, policies, patterns, and practices that directly and proximately caused the deprivation of the civil and constitutional rights of Plaintiff, and the damages and injuries described herein. They did so with deliberate indifference to the rights of the detainee, and/or prisoner and had actual and/or constructive knowledge of the pervasive and widespread practice of its deputies' sexual assault and failure to report sexual assault for many years, yet failed to do anything to end the practice. These written and unwritten policies, customs, patterns, and practices included:

- a) inadequate rules and policies to monitor and discipline staff that were engaged in behavior that constituted warning signs of sexual abuse, such as spending a disproportionate amount of time talking to a particular prisoner, repeatedly requesting a particular prisoner for a specific assignment, discussing personal life with a prisoner, marrying a former prisoner, or asking a prisoner a personal question.
- b) Staff were not disciplined or counseled when supervisors witnessed behavior that was indicative of warning signs of sexual abuse.
- c) Failing to train deputies regarding the constitutional rights of detainees and inmates to be free from sexual assault and/or the state and federal laws and reporting requirements.
- d) Permitting deputies displaying "red flags" of sexual abuse of inmates to continue to guard female inmates.
- e) Failing to discipline deputies that have repeatedly been reported by inmates.

- f) Failing to investigate and reviewing sexual assault incidents and/or rape.
- g) Failing to properly supervise and monitor deputies responsible for guarding female inmates.
- h) Failing to properly screen, during the hiring process, and supervise thereafter, deputies to eliminate sexual assaults by deputies on female inmates.
- i) Failing to have in place, or failing to follow, a policy or procedure to investigate sexual abuse in correctional settings.
- j) Retaining the deputy(ies), when they knew or should have known of his/her propensity to sexually abuse inmates.

95. At all relevant times, Defendants acted unreasonably and with deliberate indifference and disregard for the constitutional and civil rights of Plaintiff. The actions of the defendants were malicious, willful, wanton, and reckless.

96. The failure by Defendants to supervise, train, or discipline personnel was so obvious that the failure to do so amounted to a policy of "deliberate indifference."

97. Such acts as alleged herein were the proximate cause of injury and damage to the plaintiff.

98. Upon information and belief, Defendants' custom, practice, and/or policy on condoning sexual assault by its deputies, directly and proximately resulted in the Plaintiff being assaulted, battered, subjected to sexual assault.

99. Upon information and belief, and despite due and repeated notice that its deputies have an ongoing custom or practice of sexually assaulting inmates and thereafter not timely and/or properly reporting allegations of sexual assault by its deputies, Defendants have not implemented any particular training, oversight measures or policies designed or intended to curtail the improper sexual assault by its deputies on female inmates, until this year.

100. JANE DOE suffered physical, emotional, and psychological pain and other damages as a result of this violation.

**SIXTH CAUSE OF ACTION
SUPERVISORY LIABILITY FOR DEPRIVATION OF RIGHTS
UNDER THE UNITED STATES CONSTITUTION THROUGH 42 U.S.C. § 1983
(BY JANE DOE AGAINST ERIE COUNTY, TIMOTHY B. HOWARD)**

101. Paragraphs 1-99 are hereby incorporated and realleged.

102. By failing to remedy the wrongs committed by their subordinates, in failing to properly train, screen, supervise, or discipline their subordinates, and by personally participating in the constitutional injuries as set forth elsewhere herein, defendant COUNTY and the Defendant SHERIFF TIMOTHY B. HOWARD violated plaintiff's rights under the United States Constitution, through 42 U.S.C. §1983.

103. As a result of the foregoing, Plaintiff was deprived of their liberty and other constitutional rights, suffered bodily injury, pain and suffering, psychological and emotional injury, costs, and expenses, and were otherwise damaged and injured.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and demands judgment in her favor on each of her claims against defendants as follows;

- a. Exercise jurisdiction over Plaintiff's claims and grant her a jury trial.
- b. Award Plaintiff economic and non-economic damages, in an amount to be ascertained according to proof, and interest on said sums from the date of judgment.
- c. Award Plaintiff punitive damages in an amount sufficient to punish them and deter others from similar conduct.
- d. Award Plaintiff reasonable attorney's fees and costs as provided by 42 U.S.C. § 1988; and
- e. Grant Plaintiff such other and further relief as this Court deems just and appropriate, including, declaratory and injunctive relief.

DATED: Buffalo, New York
October 31, 2022

LIPSITZ GREEN SCIME CAMBRIA LLP

By: /s/ Melissa D. Wischerath
MELISSA D. WISCHERATH, ESQ.
Attorneys for Plaintiff
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333
[MDW: # 71373.0001]



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 7, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Smith, Zackery, Charlie Smith and Paula Freeman v. Deputy Mohawk, et al.</i>
Document Received:	Summons and Complaint
Name of Claimant:	Zackery Smith, Charlie Smith and Paula Freeman of Gowanda, NY
Claimant's attorney:	Chad A. Davenport, Esq. Rupp Baase Pfalzgraf Cunningham LLC 1600 Liberty Building 424 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

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

UNITED STATES DISTRICT COURT

for the

Western District of New York

Zackery Smith, Charlie Smith, Paula Freeman

Plaintiff(s)

v.

Elwood Mohawk, Jonathan Hanna, Justin Hyde,
Jeremy Lehning, Shaun Hediger, Cully Ferrick,
Matthew NOecker, Timothy Donovan, and Michael
Hontz

Defendant(s)

Civil Action No. 1:22-cv-00823

SUMMONS IN A CIVIL ACTION

Deputy

To: (Defendant's name and address) ELWOOD MOHAWK, individually and in his Capacity as a Deputy of the Erie County
Sherriff's Office,
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:

Chad A. Davenport
Rupp Baase Pfalzgraf Cunningham LLC
1600 Liberty Building, 424 Main Street
Buffalo, New York 14202

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

Date: 11/2/2022



CLERK OF COURT

Mary Choewenguth
Signature of Clerk or Deputy Clerk

Mary Choewenguth

COMM. 2D-4

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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: _____

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ZACKERY SMITH
227 West Main Street
Gowanda, New York 14070

CHARLIE SMITH
227 West Main Street
Gowanda, New York 14070

PAULA FREEMAN
185 Buffalo Street
Gowanda, New York 14070

Plaintiffs,

v.

ELWOOD MOHAWK, individually and in
his Capacity as a Deputy of the Erie County
Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

JONATHAN HANNA, individually and in
his Capacity as a Detective of the Erie County
Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

JUSTIN HYDE, individually and in his
Capacity as a Deputy of the Erie County
Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

JEREMY LEHNING, individually and in
his Capacity as a Lieutenant of the Erie
County Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

**COMPLAINT AND
JURY DEMAND**

Civil Action No. 1:22-cv-823

SHAUN HEDIGER, individually and in his
Capacity as a Detective of the Erie County
Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

CULLY FERRICK, individually and in his
Capacity as a Detective of the Erie County
Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

MATTHEW NOECKER, individually and
in his Capacity as a Detective of the Erie
County Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

TIMOTHY DONOVAN, individually and in
his Capacity as a Detective of the Erie County
Sherriff's Office,
10 Delaware Avenue,
Buffalo, New York 14202

MICHAEL HONTZ, individually and in his
Capacity as a Village of Gowanda Police
Officer,
27 East Main Street,
Gowanda, New York 14070,

Defendants.

Plaintiffs, Zackery Smith, Charlie Smith, and Paula Freeman (collectively referred to as "Plaintiffs") by their attorneys, Rupp Baase Pfalzgraf Cunningham LLC, as and for their complaint against defendants, Elwood Mohawk, Jonathan Hanna, Justin Hyde, Jeremy Lehnning, Shaun Hediger, Cully Ferrick, Matthew Noecker, Timothy Donovan, and Michael Hontz (collectively referred to as "Defendants"), allege as follows:

JURISDICTION

1. This action is brought under 42 U.S.C. §§ 1983 and 1988 and under the Fourth and Fourteenth Amendments to the United States Constitution.
2. This Court has subject matter jurisdiction over all claims pursuant to 28 U.S.C. §§ 1331, 1343, and 1983.
3. Plaintiffs further invoke this Court's pendent jurisdiction, pursuant to 28 U.S.C. § 1367(a), over any and all state-law claims and as against parties that are so related to claims in this action within the original jurisdiction of this Court that they form part of the same case or controversy.

VENUE

4. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the Western District of New York because the events forming the basis of Plaintiffs' complaint occurred in this District.

PARTIES

5. At all times hereinafter mentioned, Zackery Smith was and is a citizen of the State of New York, residing at 227 West Main Street, Gowanda, New York 14070.
6. At all times hereinafter mentioned, Charlie Smith was and is a citizen of the State of New York, residing at 227 West Main Street, Gowanda, New York 14070.
7. At all times hereinafter mentioned, Paula Freeman was and is a citizen of the State of New York, residing at 185 Buffalo Street, Gowanda, New York 14070.
8. Defendant, Elwood Mohawk, was and is a resident of the County of Erie, and State of New York. He is and was a deputy employed by the County of Erie at all times

hereinafter mentioned, and was acting within the scope of his employment and official capacity as a deputy at the time of the incident giving rise to this lawsuit. In addition, defendant Mohawk is being sued in his individual capacity for damages caused by his actions and/or conduct.

9. Defendant, Jonathan Hanna, was and is a resident of the County of Erie, and State of New York. He is and was a detective employed by the County of Erie at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity as a detective at the time of the incident giving rise to this lawsuit. In addition, defendant Hanna is being sued in his individual capacity for damages caused by his actions and/or conduct.

10. Defendant, Jeremy Lehning, was and is a resident of the County of Erie, and State of New York. He is and was a lieutenant employed by the County of Erie at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity as a lieutenant at the time of the incident giving rise to this lawsuit. In addition, defendant Lehning is being sued in his individual capacity for damages caused by his actions and/or conduct.

11. Defendant, Shaun Hediger, was and is a resident of the County of Erie, and State of New York. He is and was a detective employed by the County of Erie at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity as a detective at the time of the incident giving rise to this lawsuit. In addition, defendant Hediger is being sued in his individual capacity for damages caused by his actions and/or conduct.

12. Defendant, Cully Ferrick, was and is a resident of the County of Erie, and State of New York. He is and was a detective employed by the County of Erie at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity

as a detective at the time of the incident giving rise to this lawsuit. In addition, defendant Ferrick is being sued in his individual capacity for damages caused by his actions and/or conduct.

13. Defendant, Justin Hyde, was and is a resident of the County of Erie, and State of New York. He is and was a deputy employed by the County of Erie at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity as a deputy at the time of the incident giving rise to this lawsuit. In addition, defendant Hyde is being sued in his individual capacity for damages caused by his actions and/or conduct.

14. Defendant, Matthew Noecker, was and is a resident of the County of Erie, and State of New York. He is and was a detective employed by the County of Erie at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity as a detective at the time of the incident giving rise to this lawsuit. In addition, defendant Noecker is being sued in his individual capacity for damages caused by his actions and/or conduct.

15. Defendant, Timothy Donovan, was and is a resident of the County of Erie, and State of New York. He is and was a detective employed by the County of Erie at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity as a detective at the time of the incident giving rise to this lawsuit. In addition, defendant Donovan is being sued in his individual capacity for damages caused by his actions and/or conduct.

16. Defendant, Michael Hontz, was and is a resident of the County of Erie, and State of New York. He is and was a police officer employed by the Village of Gowanda at all times hereinafter mentioned, and was acting within the scope of his employment and official capacity as a police officer at the time of the incident giving rise to this lawsuit. In addition,

defendant Hontz is being sued in his individual capacity for damages caused by his actions and/or conduct.

FACTUAL BACKGROUND

Overview

17. On December 14, 2019, at approximately 1:54 a.m., Deputy Mohawk encountered a dark colored Pontiac G6 sedan, which had a broken driver-side headlight. Deputy Mohawk proceeded to initiate a traffic stop in front of 191 Buffalo Street, Gowanda, New York. He observed four individuals in the vehicle, and upon confirming the driver's identity, he saw a male exit the rear passenger door of the vehicle and flee on foot in the area of 191 Buffalo Street.

18. Deputy Mohawk did not pursue the fleeing individual immediately but instead approached the vehicle again to learn more about him. The suspect apparently left his phone in the car. Deputy Mohawk used the phone to call 911 and he sent the suspect's phone number to dispatch. Using this method, Deputy Mohawk was able to identify the suspect as Jeffrey Schosek. Dispatch advised Deputy Mohawk that Mr. Schosek had multiple open warrants for his arrest.

19. Deputy Mohawk subsequently advised nearby Police that Mr. Schosek had fled, which prompted the arrival of Deputy Hyde, Officer Hontz, and Lt. Lehning on the scene to search for Mr. Schosek. In official police reports, Deputy Hyde states that he was told by Deputy Mohawk that Mr. Schosek ran in the area of 191 Buffalo Street.

20. Fifteen minutes after Mr. Schosek fled, the four officers began searching the backyards of surrounding households. After unsuccessfully searching the backyards, the officers proceeded to search the woods behind 191 Buffalo Street for roughly five minutes.

21. When the officers could not find Mr. Schosek in the woods, they then approached the Can Do Redemption Center building (hereinafter, "Redemption Center"), located at 185 Buffalo Street. The officers approached the Redemption Center approximately thirty minutes after Deputy Mohawk observed Mr. Schosek fleeing from the vehicle.

22. The Redemption Center is owned by plaintiff Paula Freeman, who is the mother of plaintiff Charlie Smith and the grandmother of plaintiff Zackery Smith. The Redemption Center is a family business. Plaintiffs Charlie and Zackery Smith are both employees at the Redemption Center, but they do not own the Redemption Center.

23. Deputy Hyde entered the Redemption Center building for about fifteen seconds before communicating to the other responding officers that the back door was unlocked and accessible. After a few minutes, Deputy Hyde and Lt. Lehning both entered the Redemption Center together.

24. Deputy Hyde and Lt. Lehning entered the basement of the Redemption Center, which was accessible only to Redemption Center employees. The officers, however, found no evidence that Mr. Schosek was there. The officers searched every room in the basement but did not find Mr. Schosek in any of them. In addition to Deputy Hyde and Lt. Lehning, Officer Hontz of the Village of Gowanda Police Department also entered the Redemption Center building and participated in the search.

25. At this point, the three police officers remained in and searched the Redemption Center roughly forty minutes after Deputy Mohawk first reported that Mr. Schosek had fled, according to the Complaint Summary Report.

26. While the officers did not find Mr. Schosek, they found a quantity of marijuana in a storage room. According to police reports, the door to the storage room was closed when the officers entered the basement. Officers opened the door to the storage room, entered the room, and searched it.

27. Following the discovery of the marijuana, Defendants determined that the Redemption Center was owned by plaintiff Paula Freeman, the mother of Charlie Smith and grandmother of Zackery Smith. Defendants speculated that both Charlie and Zackery had access to the property, and further speculated that the marijuana belonged to Charlie Smith. Upon information and belief, the Defendants' speculation was due to knowledge of Charlie Smith's prior arrest and conviction on a marijuana possession and dealing charge.

28. Upon further information and belief, the Defendants knew of plaintiff Charlie Smith's prior drug related offense before they entered the Redemption Center, and further knew of Charlie Smith's connection to the Redemption Center. Based on this knowledge, the Defendants attempted to use the doctrine of "hot pursuit" as an excuse to enter and search the Redemption Center for drugs after the suspect, Jeffrey Schosek, escaped in front of the building. Upon information and belief, the Defendants hoped to find drugs in the Redemption Center belonging to Charlie Smith to make up for allowing Mr. Schosek to escape.

29. Defendants located Charlie Smith at his residence at 227 West Main Street, Gowanda, New York, and Lt. Lehning sent Deputy Mohawk and Officer Hontz there to bring Charlie Smith to the scene for further investigation and questioning. Charlie Smith was

handcuffed and detained in the backseat of a sheriff vehicle for nearly two hours, during which time, he observed police officers enter and exit the Redemption Center. Shortly thereafter, Zackery Smith arrived at the Redemption Center.

30. Erie County detectives Shaun Hediger, Matthew Noecker, Cully Ferrick, Jonathan Hanna, and Timothy Donovan arrived at the Redemption Center to assist in the investigation and search of the Redemption Center's basement.

31. At this point, Lt. Lehning instructed Detective Hediger to begin photographing the crime scene, starting from the immediate area of the traffic stop to the back entrance of the Redemption Center.

32. Upon information and belief, Defendants, knowing they had conducted an illegal search of the Redemption Center's basement, conferred amongst themselves, and decided to ask Charlie Smith to provide written consent to search the basement, presumably to immunize their earlier unlawful entry after the fact. In order for Charlie Smith to provide the written consent, officers had to remove his handcuffs before he could sign.

33. Defendants brought Charlie and Zackery Smith to the basement, where they questioned the two of them. Zackery Smith admitted to possessing the marijuana. Defendants, however, apparently did not believe Zackery Smith after he confessed to possessing the marijuana, and they both asked Zackery "Are you sure the marijuana belongs to you?" and "Are you sure the marijuana does not belong to your father?" Lt. Lehning and Deputy Mohawk subsequently arrested and processed Zackery Smith after his confession for Third Degree Criminal Possession of Marihuana, a Class E Felony. *See* New York's Penal Law Section 221.20.

34. Following Zackery Smith's arraignment on January 8, 2020, the undersigned attorneys appeared as defense counsel on at least two different occasions. Plaintiff Zackery Smith requested a suppression hearing at the second hearing. Due to the onset of COVID-19 in March 2020, the suppression hearing was not scheduled until September 26, 2020.

35. Shortly before the hearing, after discussing with the officers Plaintiffs' claim that the Redemption Center was searched in violation of the Plaintiffs' Fourth Amendment rights, the Erie County District Attorney assigned to the case contacted the undersigned attorneys and advised that she would be dismissing the case at the suppression hearing. On September 26, 2020, the DA requested dismissal, which was granted by Town of Collins Judge Brian Gernatt.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS

Unreasonable Search and Seizure under 42 U.S.C. § 1983

Against All Defendants

36. Plaintiffs incorporate the allegations contained in paragraphs 1 through 35 of this complaint as if fully set forth herein.

37. At all relevant times, Plaintiffs enjoyed and possessed a right under the Fourth and Fourteenth Amendments to the Constitution of the United States to be free from unreasonable searches and seizures and to be secure in his person, home, personal effects, and property.

38. As described above, Defendants unlawfully and unreasonably entered and searched the Redemption Center, without lawful authority in the form of probable cause or a validly issued search warrant naming the Plaintiffs or the premises.

39. Defendants, without justification, entered the Redemption Center and searched the Plaintiffs' personal effects and property inside the Redemption Center's basement and within that, its storage room where the marijuana was found which was used to bring criminal charges against the plaintiff Zackery Smith.

40. Zackery and Charlie Smith, as employees of the Redemption Center and members of the family that operates and manages the Redemption Center, had a reasonable expectation of privacy in their personal effects and property contained in the Redemption Center and its basement, including plaintiff Zackery Smith's marijuana in the storage room in the basement. Plaintiff Paula Freeman, as the owner of the Redemption Center and its building, had a reasonable expectation of privacy in her personal effects and property contained in the Redemption Center and its basement, including plaintiff Zackery Smith's marijuana in the storage room in the basement.

41. As a direct and proximate result of the Defendants' unlawful actions as alleged herein, Defendants deprived Plaintiffs of their rights under the Fourth and Fourteenth Amendments to be free from unreasonable search and seizure.

42. Defendants' conduct was outrageous, intentional, and malicious, or at the very least grossly negligent, and exhibited a reckless disregard and deliberate indifference for Plaintiffs' rights.

43. Defendants' initial entry into the Redemption Center and its basement area, including the storage closet which contained Zackery Smith's property, was not otherwise privileged and was performed in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States.

44. As a direct and proximate result of the foregoing, the Plaintiffs were damaged and injured in an amount to be determined at trial.

45. The aforesaid conduct by Defendants was willful, malicious, oppressive, and/or reckless and was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged herein.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS

False Arrest under 42 U.S.C. § 1983

Against all Defendants

46. Plaintiffs incorporate the allegations contained in paragraphs 1 through 45 of this complaint as if fully set forth herein.

47. Defendants are liable pursuant to 42 U.S.C. § 1983 for objectively unreasonably seizing and unlawfully arresting plaintiffs Charlie and Zackery Smith in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

48. Defendants were acting under the color of law when plaintiffs Charlie and Zackery Smith were arrested and/or detained.

49. Defendants did not have probable cause to charge that plaintiffs Charlie or Zackery Smith violated any State or Federal law.

50. Defendants deprived plaintiffs Charlie and Zackery Smith of the rights, privileges, and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States and in violation of 42 U.S.C. § 1983.

51. Defendants confined plaintiffs Charlie and Zackery Smith when they handcuffed them, transported Charlie Smith from his home to the Redemption Center in handcuffs, and subsequently processed Zackery Smith's arrest on December 14, 2019.

52. Defendants continuously confined Zackery Smith until he was released on his own recognizance at approximately 8:00 a.m. on December 14, 2019.

53. The confinement of plaintiffs Charlie and Zackery Smith by the defendants was not otherwise privileged and was performed in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States.

54. As a direct and proximate result of the foregoing, plaintiffs Charlie and Zackery Smith were damaged and injured in an amount to be determined at trial.

55. The aforesaid conduct by the defendants was willful, malicious, oppressive, and/or reckless and was of such a nature that plaintiffs Charlie and Zackery Smith claims punitive damages against each of them in an amount commensurate with the wrongful acts alleged herein.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS

False Imprisonment under 42 U.S.C. § 1983

Against all Defendants

56. Plaintiffs incorporate the allegations contained in paragraphs 1 through 55 of this complaint as if fully set forth herein.

57. Defendants are liable pursuant to 42 U.S.C. § 1983 for objectively unreasonably seizing and unlawfully arresting and/or detaining Charlie and Zackery Smith in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

58. Defendants were acting under the color of law when plaintiffs Charlie and Zackery Smith were arrested and/or detained.

59. Defendants did not have probable cause to charge that plaintiffs Charlie and Zackery Smith violated any Federal or State law.

60. Defendants deprived plaintiffs Charlie and Zackery Smith of the rights, privileges, and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States and in violation of 42 U.S.C. § 1983.

61. Defendants confined plaintiffs Charlie and Zackery Smith when they handcuffed them, transported Charlie Smith from his home to the Redemption Center in handcuffs, and subsequently processed Zackery Smith's arrest on December 14, 2019.

62. Defendants continuously confined Zackery Smith until he was released on his own recognizance at approximately 8:00 a.m. on December 14, 2019.

63. The confinement of plaintiffs Charlie and Zackery Smith by the defendants was not otherwise privileged and was performed in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States.

64. As a direct and proximate result of the foregoing, plaintiffs Charlie and Zackery Smith were damaged and injured in an amount to be determined at trial.

65. The aforesaid conduct by the defendants was willful, malicious, oppressive, and/or reckless and was of such a nature that plaintiffs Charlie and Zackery Smith claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged herein.

FOURTH CLAIM FOR RELIEF

VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS

Failure to Intervene under 42 U.S.C. § 1983

Against all Defendants

66. Plaintiffs incorporate the allegations contained in paragraphs 1 through 65 of this complaint as if fully set forth herein.

67. Defendants failed to take reasonable steps to prevent their fellow officers from engaging in the illegal acts alleged herein, though they were present at the scene of such violation and were capable of doing so.

68. Defendants' actions violated Plaintiffs' Constitutionally protected rights under the Fourth and Fourteenth Amendments.

69. Defendants knew, or reasonably should have known, that their conduct violated Plaintiffs' clearly established Constitutionally protected rights.

70. Defendants acted with intent to violate, or with deliberate or reckless indifference to, Plaintiffs' clearly established rights under the Fourth and Fourteenth Amendments to the United States Constitution.

71. At all times relevant herein, Defendants were acting under the color of state or Federal law.

72. As a direct and proximate result of the foregoing, plaintiffs Charlie and Zackery Smith were damaged and injured in an amount to be determined at trial.

73. The aforesaid conduct by Defendants was willful, malicious, oppressive, and/or reckless and was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged herein.

FIFTH CLAIM FOR RELIEF

**VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS
Conspiracy to Violate Plaintiffs' Constitutional Rights under 42 U.S.C. § 1983
Against all Defendants**

74. Plaintiffs incorporate the allegations contained in paragraphs 1 through 73 of this complaint as if fully set forth herein.

75. By and through the actions described above, Defendants, acting under color of state law, conspired to deprive Plaintiffs of their Constitutional rights, in violation of 42 U.S.C. § 1983 and their Fourth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

76. Defendants agreed to deprive Plaintiffs of their Constitutional rights and deprived them of their Constitutional rights by illegally entering and searching the basement and storage closet of the Redemption Center in which Plaintiffs had a reasonable expectation of privacy.

77. In furtherance of their conspiracy to deprive Plaintiffs of their Constitutional rights, Defendants determined the location of Charlie Smith, brought him to the Redemption Center, and sought his written consent to search the basement and its storage closet to legitimize their prior illegal search earlier that morning.

78. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

79. The aforesaid conduct by Defendants was willful, malicious, oppressive, and/or reckless and was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged herein.

SIXTH CLAIM FOR RELIEF

VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS

Malicious Prosecution under 42 U.S.C. § 1983

Against all Defendants

80. Plaintiffs incorporate the allegations contained in paragraphs 1 through 79 of this complaint as if fully set forth herein.

81. Defendants unreasonably seized and unlawfully arrested Zackery Smith in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

82. Upon information and belief, Defendants, despite knowing that probable cause did not exist to detain, arrest, and prosecute plaintiff Zackery Smith for an alleged violation of Section 221.20 of New York State Penal Law, acted intentionally, and with malice, to cause Zackery Smith to be arrested, charged, and prosecuted for that charge, thereby violating his rights pursuant to the Fourth and Fourteenth Amendments to the United States Constitution.

83. The prosecution of the charges levied by the Defendants against Zackery Smith on December 14, 2019 were terminated in his favor.

84. But for the Defendants' unlawful and malicious conduct, Zackery Smith would not have been arrested or prosecuted.

85. As a direct and proximate result of the foregoing, Zackery Smith was damaged and injured in an amount to be determined at trial.

86. The aforesaid conduct by the Defendants was willful, malicious, oppressive, and/or reckless and was of such a nature that Zackery Smith claims punitive damages against each of them in an amount commensurate with the wrongful acts alleged herein.

DEMAND FOR JURY TRIAL

87. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of issues so triable.

PRAYER FOR RELIEF

Plaintiffs, Zackery Smith, Charlie Smith, and Pauly Freeman, pray for relief and demand judgment as follows:

1. That Plaintiffs be awarded compensatory damages against all Defendants in an amount to be determined at trial;
2. That Plaintiffs be awarded punitive damages against all Defendants in an amount to be determined at trial;
3. That this Court, pursuant to 42 U.S.C. § 1988, issue an order awarding Plaintiffs reasonable attorneys' fees, together with the costs of this action against all Defendants; and
4. That this Court award such other further relief, together with any other legal and equitable relief, or both, as the Court deems just and proper.

Dated: November 1, 2022
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for Plaintiffs

s/Chad A. Davenport

R. Anthony Rupp III, Esq.

Chad A. Davenport, Esq.

1600 Liberty Building

Buffalo, New York 14202

(716) 854-3400

rupp@ruppbaase.com

davenport@ruppbaase.com

4857-2905-9129, v. 2



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 10, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Rogers, Unique v. Erie County DA's Office, Erie County Central Police Services and County of Erie</i>
Document Received:	Verified Petition
Name of Claimant:	Unique Rogers
Claimant's attorney:	Brittany L. Penberthy, Esq. Penberthy Law Group LLP 227 Niagara Street Buffalo, New York 14201

Should you have any questions, please call.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Toth", is written over the typed name.

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

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

UNIQUE ROGERS,

Petitioner,

v.

ERIE COUNTY DISTRICT ATTORNEY'S OFFICE,
ERIE COUNTY CENTRAL POLICE SERVICES,
and COUNTY OF ERIE,

Respondents.

NOTICE OF PETITION

Oral Argument Requested

Index No.:

PLEASE TAKE NOTICE that, upon the annexed Verified Petition, and exhibits attached thereto, dated October 7, 2022, an application will be filed in Supreme Court County of Erie, State of New York on or about _____, 2022 at _____ a.m./p.m., or soon thereafter as counsel may be heard, for a judgment pursuant to Article 78 of Civil Practice Law and Rules ("C.P.L.R.") directing Respondents to act in accordance with the law, and prohibiting any actions absent legal authority; awarding reasonable attorney's fees and costs pursuant to Article 86 of the Civil Practice Law and Rules; and granting other relief the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to C.P.L.R. § 7804 answering papers, if any, shall be received by the undersigned at least five (5) days before the return date, and the Petitioner's reply shall be served at least one (1) day before the return date.

Dated: October 23, 2022
Buffalo, New York

PENBERTHY LAW GROUP LLP

By: s/Brittanylee Penberthy
Brittanylee Penberthy, Esq.
Attorney for Petitioner
227 Niagara Street
Buffalo, New York 14201
Telephone (716) 803.8402

TO: ERIE COUNTY DISTRICT ATTORNEY'S OFFICE
25 Delaware Avenue
Buffalo, New York 14202

ERIE COUNTY CENTRAL POLICE SERVICES

45 Elm Street
Buffalo, New York 14203

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

CC: OFFICE OF THE ATTORNEY GENERAL
The Capitol
Albany, New York 12224-0341

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

UNIQUE ROGERS,

Petitioner,

v.

ERIE COUNTY DISTRICT ATTORNEY'S OFFICE,
ERIE COUNTY CENTRAL POLICE SERVICES,
and COUNTY OF ERIE,

Respondents.

**AMENDED
NOTICE OF PETITION**

Oral Argument Requested

Index No.: 813041/2022

PLEASE TAKE NOTICE that, upon the annexed Verified Petition, and exhibits attached thereto, dated October 7, 2022, an application will be filed in Supreme Court County of Erie, State of New York on or about December 14, 2022 at 11:00 a.m./p.m., or soon thereafter as counsel may be heard, for a judgment pursuant to Article 78 of Civil Practice Law and Rules ("C.P.L.R.") directing Respondents to act in accordance with the law, and prohibiting any actions absent legal authority; awarding reasonable attorney's fees and costs pursuant to Article 86 of the Civil Practice Law and Rules; and granting other relief the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to C.P.L.R. § 7804 answering papers, if any, shall be received by the undersigned at least five (5) days before the return date, and the Petitioner's reply shall be served at least one (1) day before the return date.

Dated: November 4, 2022
Buffalo, New York

PENBERTHY LAW GROUP LLP

By: s/Brittanylee Penberthy
Brittanylee Penberthy, Esq.
Attorney for Petitioner
227 Niagara Street
Buffalo, New York 14201
Telephone (716) 803.8402

TO: ERIE COUNTY DISTRICT ATTORNEY'S OFFICE
25 Delaware Avenue
Buffalo, New York 14202

ERIE COUNTY CENTRAL POLICE SERVICES
45 Elm Street
Buffalo, New York 14203

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

CC: OFFICE OF THE ATTORNEY GENERAL
The Capitol
Albany, New York 12224-0341



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 14, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Ward, Londarr v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Londarr Ward ICN #108604 c/o Erie County Correctional Facility 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

COMM. 2D-4

Notice of Claim

NOV 09 2022

To: Erie County Executive
County Attorney for the County of Erie
Erie County Sheriff

Londarr Ward
ICN# 108604

PLEASE TAKE NOTICE that ICN# 108604, the claimant, hereby makes claim against the County of Erie, State of New York, for damages sustained by him for personal injury as follows:

The claimant's post-office address is Erie County Correctional Facility
11581 Walden Ave; Alden NY 14004

The date upon which the injury complained of occurred was the 27th day of September, 2022 on or about the hour of 9 AM and continuing thereafter.

The injuries sustained by the claimant by reason thereof are more particularly described as follows: Excessive Force
Wrist abrasions / Wrist sprains / back injuries / ~~bruises~~ bruises

The injuries complained of were sustained as a result of the negligence of said county in its care and management of the Erie County Correctional Facility, 11581 Walden Avenue, Alden New York 14004 which said facility was wholly under its operation and control. Claimant was incarcerated at said facility, and thus in the care and custody of said Erie County sheriff. Claimant requested Monetary compensation for

Due to the wrongful denial of Erie County Sheriff's Office, Claimant was to suffer the above described injuries. pain and suffering and personal injuries. (\$70,000) or negotiable

By reason thereof, the claimant sustained injury to his person due to said county's negligence and/or wrongful denial of Placing the cuffs on my too tight negligently which injured me, purposely bending my fingers which injured me, and throwing me on the ground. The Claimant presents this claim and demand for adjustment and payment and gives with which notice that unless his claim is adjusted and paid within the time provided by law from the date of its presentation, it is claimant's intention to commence an action thereon. injured me

Dated Oct. 26th, 2022

October 26th, 2022

X Londarr Ward Pro Se
Erie County Corrs. Fac.
11581 Walden Ave
Buffalo, New York 14
Alden, NY 14004



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 17, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Occhino Corp. v. County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	Occhino Corp. 2650 Seneca Street West Seneca, New York 14224
Claimant's attorney:	R. Anthony Rupp, III, Esq. Rupp Baase Pfalzgraf Cunningham LLC 1600 Liberty Building 424 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

OCCHINO CORP.
2650 Seneca Street
West Seneca, New York 14224

Plaintiff,

v.

Index No.:

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

Defendant.

SUMMONS

TO DEFENDANT:

YOU ARE SUMMONED to appear in this action by serving your answer to the complaint on plaintiff's attorney within the time limits stated below.

Erie County is designated as the County where this action will be tried, because the parties to this action reside in that County.

TIME LIMITS TO ANSWER:

- (1) If this summons is served by delivery to you personally within New York State, you must answer the complaint within TWENTY (20) days after such delivery.
- (2) If this summons is not served by delivery to you personally within New York State, and is not served pursuant to CPLR 312-a, you must answer the complaint within THIRTY (30) days after service is complete.
- (3) If this summons is served pursuant to CPLR 312-a, see accompanying STATEMENT OF SERVICE BY MAIL for time limits to answer.

IF YOU FAIL TO ANSWER THE COMPLAINT within the time stated,
judgment will be entered against you for the relief demanded in the complaint.

Dated: Buffalo, New York
November 7, 2022

RUPP BAASE PFALZGRAF CUNNINGHAM LLC



By: _____

R. Anthony Rupp III, Esq.

Aaron W. Knights, Esq.

Jacob J. Honan, Esq.

1600 Liberty Building
Buffalo, New York 14202
(716) 854-3400
rupp@ruppbaase.com
knights@ruppbaase.com
honan@ruppbaase.com

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

OCCHINO CORP.,

Plaintiff,

v.

Index No.:

COUNTY OF ERIE,

Defendant.

COMPLAINT

Occhino Corp., by and through its attorneys, Rupp Baase Pfalzgraf

Cunningham LLC, as and for its Complaint against defendant County of Erie, alleges as follows:

1. At all relevant times, plaintiff Occhino Corp. ("plaintiff" or "Occhino") was and is a domestic business corporation organized and existing pursuant to the laws of the State of New York, with a principal place of business at 2650 Seneca Street, West Seneca, New York 14224.

2. Defendant County of Erie ("defendant" or "County") is a municipal corporation organized and authorized to do business in the County of Erie and the State of New York.

JURISDICTION AND VENUE

3. Jurisdiction lies with the Supreme Court of the State of New York pursuant to the Constitution of the State of New York and the New York Civil Practice Law and

Rules because this action seeks monetary damages that exceed the jurisdictional limits of all lower courts.

4. Venue is proper in Erie County under N.Y. C.P.L.R. § 503 because the defendant in this action is a resident of Erie County, and the transactions and/or occurrences giving rise to this action occurred in Erie County.

RELEVANT FACTS

5. In March of 2019, the County distributed to the road construction trade an invitation to bid on full depth pavement reconstruction and new drainage work to be completed on a portion of Lake Avenue in the Village of Blasdell, New York under Erie County Project No. CAP-200-19 (the "Project").

6. The bid documents distributed by the County included plans, specifications, and associated documentation providing the scope of work for the Project. The scope of work to be performed by the contractor for the Project included the provision of all labor, materials, machinery, tools, and equipment needed to complete full depth pavement reconstruction and new drainage work.

7. Occhino reviewed the bid documents distributed by the County and submitted a bid to complete the Project for \$3,574,949.12 that was accepted by the County. Occhino's bid included the value of the labor, equipment, materials, subcontractor costs, bonds, and fixed cost needed to complete the Project.

8. The County awarded Occhino the contract for the Project in June of 2019. Thereafter, Occhino and the County executed a contract dated on or about July 9, 2019 regarding Occhino's performance of work at the Project (the "Contract"). The Contract incorporated general and supplementary conditions, general and technical specifications, plans, drawings, Occhino's bid submissions, and New York State Department of Transportation Standard Specifications dated January 1, 2019 (the "NYS DOT Specifications") (collectively, the "Contract Documents"). Copies of the award letter from the County and the signed Contract are enclosed herein as **Exhibit A**.

9. LaBella Associates, D.P.C. ("LaBella") served as the County's designer and on-site representative for the Project.

10. Upon information and belief, the Contract Documents, including without limitation the technical specifications, plans, designs, and site drawings, were created for the County by LaBella or the County's other agents.

11. Pursuant to Article 1 of the Contract, Occhino was required to construct full depth pavement reconstruction and new drainage work at the Project using the Contract Documents provided by the County.

12. The Contract Documents described the pre-construction conditions of Lake Avenue at the Project location. Pursuant to Section 104-03 of the NYS DOT Specifications

(which are incorporated into the Contract), if Occhino encountered physical conditions at the Project that differed materially from the conditions noted in the Contract Documents, Occhino was required to provide the County with written notice of these differing conditions.

13. Additionally, per Section 104-03 of the NYS DOT Specifications, where differing conditions at the Project resulted in an increase in Occhino's cost of, or the time required for, performance under the Contract, these differing site conditions require an equitable adjustment of the Contract price.

14. Occhino's work at the Project commenced on September 17, 2019. The last date that Occhino performed Contract work at the Project was November 18, 2020. The last date that Occhino completed punch list work at the Project was June 7, 2021.

15. Occhino performed all work at the Project, including, but not limited to, curb installation, in accordance with its obligations under the Contract Documents. Occhino's work at the Project was performed in four phases ("Phases I-IV") between September of 2019 and November of 2020.

16. Occhino encountered unforeseen and unforeseeable differing site conditions at the Project that caused Occhino to incur substantial additional costs, materially affected the timeline for completion of the Project, and require an equitable adjustment of the Contract price. Occhino provided the County and/or LaBella with actual, prompt, written notice of each of these unforeseen issues. Further, Occhino has kept and maintained records showing

the costs that it incurred in performing additional work due to the differing site conditions.

However, to date, defendant has refused to compensate plaintiff for the work that it performed as a consequence of the differing site conditions. The differing site conditions that Occhino could not have foreseen and that caused Occhino to incur increased costs are detailed below.

17. In late September of 2019, during the early stages of construction, Occhino discovered that the existing waterline on Lake Avenue was in conflict with the storm sewer that the County had proposed and that was intended to be installed by Occhino. This was a differing site condition that was not reflected in the Contract Documents. Occhino provided written notice of this condition. This differing site condition caused Occhino to perform significant work that affected Phases I, III, and IV of the Project. True and accurate copies of e-mails that address this waterline issue are attached hereto as **Exhibit B**.

18. The Project site lacked positive drainage at a location where water was to be discharged from Lake Avenue, and this location prevented runoff from properly draining from the site. This condition was not reflected in the Contract Documents. Around October of 2019, this condition became apparent, and this condition caused Occhino to have to perform significant additional work, including, but not limited to, pumping out a trench at the Project site on a daily basis. Occhino provided notice to the County of the drainage issue and stated that the lack of proper drainage could result in the eventual failure of the roadway. This lack of positive drainage affected Phases I and II of the Project and significantly delayed Occhino's progress. The eventual redesign of the storm sewer during Phases I and II took approximately nine (9) months. As a result of this redesign, Occhino was directed by LaBella (on behalf of the County)

to proceed and complete Phases III and IV prior to completing Phases I and II. True and accurate copies of correspondences that address the drainage issue are attached hereto as **Exhibit C.**

19. Beginning in late October of 2019, and continuing for the majority of all four phases of the Project, the County (per the instructions of the Erie County Water Authority) prevented Occhino from using a hydraulic hammer for both utility installation and removal of the existing roadway. Neither the Contract nor the Contract Documents prevent the use of a hydraulic hammer at the Project. The County prevented Occhino from using a hydraulic hammer after it discovered that the existing water mains on Lake Avenue were inaccurately identified on the Contract Documents. This condition reflected defective specifications and differing site conditions that resulted in additional costs and delays, as Occhino was directed to utilize alternative means of removing and demolishing the existing roadway. True and accurate copies of correspondences that address the hydraulic hammer issue are attached hereto as **Exhibit D.**

20. In May of 2020, Occhino encountered hard slag beneath the surface of Lake Avenue. However, the boring logs contained in the Contract Documents showed only traces of slag and did not reveal that the slag had solidified. This condition reflected defective specifications and differing site conditions that resulted in additional costs and delays. The solidified slag caused damage to Occhino's equipment, required Occhino to perform additional excavation work, and caused delays in construction. The slag affected Occhino's ability to efficiently install the underground utilities and perform excavation for the new curb and new

roadway replacement during Phases II, III, and IV at the Project. True and accurate copies of correspondence related to the slag issue are attached hereto as **Exhibit E**.

21. During the course of the Project, defendant and/or defendant's representative changed the original scope of work by imposing redesigns of the Project. Occhino was directed by LaBella (on behalf of the County) to work out of the original sequence. Occhino was directed to complete Phases III and IV of the Project prior to completing Phases I and II of the Project. As a direct result, Occhino was forced to delay and alter its order of work. Occhino provided notice to the County that it was incurring delays and increased costs due to these changes.

22. The County imposed other changes that resulted in additional work for Occhino. These changes include additional excavating and grading for curb placement in June of 2020 and the need for removal of sediment in a box culvert in August of 2020.

23. Occhino provided all required notices under the Contract during the course of the Project, and Occhino submitted justified claims for additional compensation for work that it performed. Meeting minutes that demonstrate that Occhino kept the County informed of these issues are attached hereto as **Exhibit F**. During the Spring of 2020, Occhino and the County exchanged numerous correspondences regarding Occhino's claims.

24. The County did not provide communication or consideration of Occhino's requests for direction or cost adjustments as required under the Contract.

25. Despite having actual written notice of the aforementioned changes, the County failed to provide meaningful or substantive guidance to Occhino. In March of 2020, the County instead directed Occhino to continue to work on the Project and assured Occhino that it (the County) would work with LaBella and Occhino to resolve Occhino's requests for additional payment. True and accurate copies of correspondences from the County that evidence the County's assurances to Occhino are attached hereto as **Exhibit G**. In good faith and in reliance on the representations that were made by the County, Occhino diligently continued its work at the Project in accordance with NYS DOT Specification Section 105-14 (which, in relevant part, provides that a contractor must continue work during the pendency of a dispute).

26. Around August of 2020, LaBella, on behalf of the County, instructed Occhino to continue performance of the scope of work and the changes thereto to completion. In accordance with and in reliance on LaBella's instructions, Occhino completed its work at the Project.

27. The County has accepted the work performed by Occhino under the Contract, including additional work performed as described above, although the County has not issued a formal notice of acceptance.

28. The additional work that Occhino performed as a result of the aforementioned site conditions resulted in Occhino's cost for the Project to total \$4,654,434.73.

A spreadsheet listing the categories of costs incurred by Occhino at the Project is attached hereto as **Exhibit H**.

29. To date, the County has paid Occhino \$3,213,831.39 for its work at the Project.

30. The County has not paid Occhino \$361,117.73 of the original Contract price.

31. The County also has refused to reimburse Occhino for its costs incurred for its performance of additional work caused by defective specifications, differing site conditions, and redesigns, which amount to \$1,079,485.61.

32. The County also has refused to remit Occhino's retention for the Project in the amount of \$160,691.66.

33. Therefore, the total amount that is due and owing from the County to Occhino for Occhino's work at the Project is \$1,601,295.00.

FIRST CAUSE OF ACTION
(Breach Of Contract For Failure To Pay For Contract Work
And Improper Withholding Of Retention)

34. Occhino repeats and realleges the allegations set forth in paragraphs 1 through 33 of this complaint with the same force and effect as if set forth at length herein.

35. On or about July 9, 2019, the County and Occhino entered into a binding Contract for full depth pavement reconstruction and new drainage work. The amount of Occhino's bid that was accepted by the County was \$3,574,949.12.

36. Occhino commenced performance of its work pursuant to the Contract shortly thereafter, in September of 2019.

37. At all relevant times, Occhino performed its duties in a workmanlike manner, consistent with the Contract, the Contract Documents, and industry standards, including with respect to the installation of the curbs at the Project.

38. Occhino at all times followed the direction of the County and/or LaBella in the performance of work, and Occhino completed the Project.

39. The County has accepted the work performed by Occhino, but the County has refused to pay Occhino for the amount that is due and owing to Occhino under Occhino's bid. To date, the County has paid Occhino only \$3,213,831.39.

40. As a result, the County has breached Article 7 and Article 8 of the Contract by withholding the sum of \$361,117.73 that is due and owing to Occhino under the accepted bid amount and the Contract price.

41. Additionally, the County has breached the Contract by withholding Occhino's retention in the amount of \$160,691.66 without justification.

42. As a direct consequence of the County's breach of the Contract, Occhino has incurred losses and damages in the amount of \$521,809.39, together with interest.

43. Based on the foregoing, Occhino demands judgment against the County in an amount to be determined at trial, together with interest.

SECOND CAUSE OF ACTION

(Breach of Contract For Failure To Remit Payment For Redesigns And Additional Work)

44. Occhino repeats and realleges the allegations set forth in paragraphs 1 through 43 of this complaint with the same force and effect as if set forth at length herein.

45. Defendant and/or defendant's representative changed the original scope of work by imposing redesigns of the Project. As a direct result, Occhino was forced to delay and alter its order of work. Occhino provided notice to the County that it was incurring delays and increased costs due to these changes.

46. The County imposed other changes that resulted in additional work for Occhino. These changes included additional excavating and grading for curb placement in June of 2020 and the need for removal of sediment in a box culvert in August of 2020.

47. Occhino complied with the claim and dispute procedures in the Contract by seeking an adjustment to the Contract price due to the additional work that Occhino performed and the delays caused by the redesigns made by the County and Labella. However, the County has refused to adjust the Contract price to account for the same.

48. As a result, the County has breached the Contract by withholding payment that is due and owing to Occhino for the redesigns and additional work costs. The County is obligated to make these payments to Occhino pursuant to NYS DOT Specification Section 104-04.

49. Based on the foregoing, Occhino demands judgment against the County for its losses and damages in an amount to be determined at trial, together with interest.

THIRD CAUSE OF ACTION
(Breach of Contract For Failure To Remit Payment
For Differing Site Conditions And Defective Specifications)

50. Occhino repeats and realleges the allegations set forth in paragraphs 1 through 49 of this complaint with the same force and effect as if set forth at length herein.

51. During the course of Occhino's work at the Project, Occhino encountered differing site conditions and/or defective specifications.

52. Specifically, the differing site conditions and/or defective specifications that Occhino encountered included (1) an existing waterline that was in conflict with the

proposed storm sewer; (2) a lack of positive drainage at the discharge location on Lake Avenue; (3) water mains on Lake Avenue that prevented Occhino from using a hydraulic hammer to demolish existing roadway; and (4) hard slag beneath the surface of the road.

53. At all relevant times, prior to August of 2020, Occhino complied substantially with the notice, claim, and dispute procedures that are listed in the NYS DOT Specifications and incorporated by reference into the Contract by providing prompt written notice of these changes to the scope of work.

54. Occhino complied with the claim and dispute procedures in the Contract by seeking an adjustment to the Contract price due to the additional work that Occhino performed as a result of the differing site conditions and defective specifications.

55. The County has accepted the work performed by Occhino, but it has refused to pay Occhino for adjustments requested due to the changes imposed as a result of differing site conditions and/or defective specifications.

56. As a result, the County has breached the Contract by withholding payment that is due and owing to Occhino for Occhino's additional work necessitated by the differing site conditions and defective specifications. The County is obligated to make these payments to Occhino pursuant to NYS DOT Specification Section 104-03.

57. Based on the foregoing, Occhino demands judgment against the County for its losses and damages in an amount to be determined at trial, together with interest.

FOURTH CAUSE OF ACTION
(Services Rendered/Unjust Enrichment)

58. Occhino repeats and realleges the allegations set forth in paragraphs 1 through 57 of this complaint with the same force and effect as if set forth at length herein.

59. Pursuant to the parties' Contract, Occhino performed certain labor, services, and furnished materials at the Project through June 7, 2021.

60. Pursuant to the Contract, at the request of the County, Occhino performed certain labor and services and furnished materials on behalf of the County, for which there is a balance due and owing to Occhino in the sum of \$1,601,295.00.

61. The County has accepted and retained the benefit of Occhino's work and has unjustly been enriched through its failure and refusal to pay for same.

62. That no portion of the \$1,601,295.00 has been paid despite due demand, and therefore the said amount is due and owing to Occhino.

63. By reason of the foregoing, Occhino has been damaged in an amount to be determined at trial, plus applicable interest.

FIFTH CAUSE OF ACTION
(Quantum Meruit)

64. Occhino repeats and realleges the allegations set forth in paragraphs 1 through 63 of this complaint with the same force and effect as if set forth at length herein.

65. Between September of 2019 and June of 2021, Occhino at the special insistence and request of the County and for its use and benefit, performed certain labor, services, and furnished materials for the Project.

66. The labor, services, and materials furnished by Occhino are reasonably worth \$1,601,295.00. This amount became due and payable in or about June of 2021, but no part of it has been paid.

67. The amount of \$1,601,295.00 is now due and unpaid for labor, services and materials provided by Occhino, with interest, from June of 2021.

68. Payment has been demanded by Occhino, but the County has refused to pay the sum or any part.

69. By reason of the foregoing, Occhino has been damaged in an amount to be determined at trial, plus applicable interest.

WHEREFORE, the plaintiff demands judgment against the defendant as follows:

- (1) On its first cause of action for breach of contract, a judgment for plaintiff's losses and damages in an amount to be determined at trial;
- (2) On its second cause of action for breach of contract, a judgment for plaintiff's losses and damages in an amount to be determined at trial;
- (3) On its third cause of action for breach of contract, a judgment for plaintiff's losses and damages in an amount to be determined at trial;
- (4) On its fourth cause of action for services rendered and unjust enrichment, a judgment for plaintiff's losses and damages in an amount to be determined at trial;
- (5) On its fifth cause of action for quantum meruit, a judgment for plaintiff's losses and damages in an amount to be determined at trial;
- (6) An award of costs, disbursements, interest, and reasonable attorney's fees to be payable by the defendant to the plaintiff; and

- (7) An award to the plaintiff of any type of relief within the Court's jurisdiction and appropriate to the proof, whether or not demanded, and imposing such terms as may be just, pursuant to N.Y. C.P.L.R. § 3017(a).

Dated: November 7, 2022
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for Plaintiff, Occhino Corp.



By: _____
R. Anthony Rupp III, Esq.
Aaron W. Knights, Esq.
Jacob J. Honan, Esq.
1600 Liberty Building
Buffalo, New York 14202
(716) 854-3400
rupp@ruppbaase.com
knights@ruppbaase.com
honan@ruppbaase.com



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 29, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Lechowicz, Diane and Raymond v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Diane and Raymond Lechowicz 1233 E. Laray Drive Alden, New York 14004
Claimant's attorney:	James A. Partacz, Esq. 3890 Seneca Street West Seneca, New York 14224

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
Diane L. Lechowicz and
Raymond P. Lechowicz as husband of
Diane L. Lechowicz
1233 E. Laray Drive
Alden, New York 14004
Claimants

This paper received at the
Erie County Attorney's Office
from Doug DiFilippo
the 14 day of November 2022
at 12:55 a.m.
Amber An
Assistant County Attorney

NOTICE OF CLAIM

vs.

County of Erie
95 Franklin Street
Buffalo, New York 14202
Respondent

**TO: CHAIRMAN OR CLERK OF THE BOARD OF SUPERVISORS, CLERK,
ATTORNEY OR TREASURER OF THE COUNTY OF ERIE**

SIRS:

PLEASE TAKE NOTICE, that the undersigned Diane L. Lechowicz and Raymond P. Lechowicz as husband of Diane L. Lechowicz residing at 1233 E. Laray Drive, Alden, New York 14004 make claims and demands against the County of Erie for injuries and damages as follows:

1. The name and address of Claimants' attorney is James A. Partacz, Attorney At Law, 3890 Seneca Street, West Seneca, New York 14224.
2. The nature of the claim: Diane L. Lechowicz was injured and suffered serious personal injuries on the 28th day of August, 2022 on and about E. Laray Drive, Town of Alden, County of Erie and State of New York at approximately 10:15 a.m. The incident occurred when Claimant was walking in said area at and about the pavement and shoulder of E. Laray Drive when she was caused to fall and sustain personal injuries. Said Claimant was rendered sick,

sore, lame and disabled, sustained various and diverse injuries, shock to her nervous system, considerable pain and suffering, severe mental and emotional injuries and other personal injuries of which the Claimant is not yet informed, including the permanent effects the nature of which is not yet known.

3. That upon information and belief, the County of Erie, its agents, servants and/or employees designed, constructed, owned, built, paved, maintained and controlled E. Laray Drive and its shoulders and right of ways in the Town of Alden, County of Erie and State of New York and said highways and shoulders and right of ways were under the General Highway System of the County of Erie and the County of Erie was bound by law to own, build and maintain said highways, right of ways and shoulders in a reasonable, safe and suitable condition for public travel both vehicular and pedestrian under the provisions of the statutes of the State of New York, the United States, County of Erie and such other cases as are made and provided; that the said County of Erie through its officers, agents, servants and/or employees, failed and neglected to own, maintain, construct, pave and control said highway, right of ways and shoulders but allowed same prior to the 28th day of August, 2022 to be and remain in a dangerous condition for public travel both vehicular and pedestrian. Further, the County of Erie, its officers, agents, servants and/or employees negligently paved said road creating dangerous conditions in said area. Upon information and belief, the County of Erie had actual and/or constructive knowledge of said dangerous and/or defective conditions by virtue of repaving same and failed to properly provide safeguards and/or precautions for the Claimants or others similarly situated to protect them from said injury. Said Claimants have been damaged in an unliquidated sum.

4. Raymond P. Lechowicz is the husband of Diane L. Lechowicz and as such is responsible for her care and is entitled to her services and society. He has, because of the

injuries aforesaid, been caused to expend sums for medical and doctor bills and will be caused to expend sums in the future. He has been and will continue to be deprived of the services and society of Diane L. Lechowicz and consequently has been damaged in an unliquidated amount.

5. The items of damage or injuries claimed are: severe and permanent personal injuries rendering Claimant sick, sore, lame and disabled, fractured nose, injured upper extremities including shoulders, sustained various and diverse injuries, shocks to her nervous system, considerable pain and suffering, severe mental and emotional injuries and other personal injuries of which the Claimant is not yet informed including permanent effects, the nature of which is not yet known to Diane L. Lechowicz together with the loss of services and society of Raymond P. Lechowicz.

6. Claimant's medical bills to date are incomplete.

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

PLEASE TAKE FURTHER NOTICE, that the Claimants demand payment of said claims and unless said claims are paid within the statutory period provided, therefore, it is the intention of Claimants to commence suit against the County of Erie to recover for the injuries sustained as a result of this accident.

DATED: West Seneca, New York
November 11, 2022

Respectfully,


Diane L. Lechowicz


Raymond P. Lechowicz

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Diane L. Lechowicz, being duly sworn deposes and says: That I am the Claimant in the above-entitled action. I have read the foregoing Notice of Claim and know its contents. The claims are true to my knowledge except as to those matters stated to be alleged upon information and belief and as to such matters I believe them to be true.


Diane L. Lechowicz

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On the 11th day of November, in the year 2022, before me the undersigned a Notary Public in and for the said state, personally appeared Diane L. Lechowicz personally known to me or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

JAMES A. PARTACZ
Notary Public, State of New York
Reg. #02PA4735162
Qualified in Erie County
My Commission Expires Dec. 31, 2025

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Raymond P. Lechowicz, being duly sworn deposes and says: That I am the Claimant in the above-entitled action. I have read the foregoing Notice of Claim and know its contents. The claims are true to my knowledge except as to those matters stated to be alleged upon information and belief and as to such matters I believe them to be true.


Raymond P. Lechowicz

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On the 11th day of November, in the year 2022, before me the undersigned a Notary Public in and for the said state, personally appeared Raymond P. Lechowicz personally known to me or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JAMES A. PARTACZ
Notary Public, State of New York
Reg. #02PA4735162
Qualified in Erie County
My Commission Expires Dec. 31, 20 23



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 29, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Jester, Kevin v. ECMCC, County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Kevin Jester 870 Elliott Drive Lewiston, New York 14092
Claimant's attorney:	R. Colin Campbell, Esq. Campbell & Associates 38 Lake Street Hamburg, New York 14075

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE CLAIM OF
KEVIN JESTER,

NOTICE OF CLAIM

Claimant,

-VS-

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

Respondents.

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

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

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

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

- (1) The name and post office address of the Claimant is:

Kevin Jester
870 Elliott Drive
Lewiston, NY 14092

- (2) The name and post office address of the Claimant's attorney is:

R. Colin Campbell, Esq.
CAMPBELL & ASSOCIATES
38 Lake Street
Hamburg, New York 14075

(3) The nature of the Claim is for injuries and related damages caused by the negligence and medical malpractice of ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER CORPORATION, and COUNTY OF ERIE, and their agents, servants, and/or employees.

(4) The Claim arose in connection with surgical treatment of Claimant, KEVIN JESTER, in conjunction with kidney transplant surgery and post-surgical care. That surgery was performed on or about May 9, 2022 by Liise Kayler, MD and Ahmad Zaaroura, MD. It was performed at ERIE COUNTY MEDICAL CENTER, 462 Grider Street, City of Buffalo, County of Erie, State of New York, a facility owned and operated by ERIE COUNTY MEDICAL CENTER CORPORATION and/or COUNTY OF ERIE. Following that surgery, Claimant remained under the custody and care of ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER CORPORATION, and/or COUNTY OF ERIE, their agents, servants, and/or employees, until his discharge on or about May 12, 2022. During that time period, Claimant underwent two surgical procedures which attempted to transplant a viable kidney donated by his sister, both were unsuccessful and caused unnecessary damage to the kidney and to Claimant's renal function, and the Respondents failed to perform the surgeries properly and timely and properly diagnose and treat his condition, as set forth herein.

It is alleged that ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER CORPORATION, and COUNTY OF ERIE, their agents, servants, and/or employees,

failed to properly perform Claimant's surgeries and diagnose and treat his diminished renal function, causing Claimant to sustain severe and permanent injuries.

It is alleged, upon information and belief, that ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER CORPORATION, and COUNTY OF ERIE, and their agents, servants, and/or employees, negligently, carelessly, and/or recklessly: failed to meet required standards of care; failed to properly hire, train, and supervise employees and staff; failed to properly monitor and document the patient's condition; failed to properly examine the patient; failed to observe and report relevant signs and/or symptoms; failed to properly treat, monitor, and observe the patient; failed to properly communicate and/or consult with other medical professionals; failed to provide properly trained and knowledgeable personnel; failed to recognize and address relevant symptoms; failed to properly respond to and/or investigate patient complaints; failed to provide proper and complete pre-surgical, surgical and post-surgical monitoring and care; failed to recognize and/or properly address patient's post-surgical symptoms; failed to properly remove and transplant the donated kidney; and failed to timely and properly identify and/or respond to serious, life-threatening conditions.

It is alleged, upon information and belief, the injury was caused, in whole or in part, by the negligence, carelessness, recklessness, and/or malpractice of ERIE COUNTY MEDICAL CENTER, ERIE COUNTY MEDICAL CENTER CORPORATION, and/or COUNTY OF ERIE, by and through their agents, servants, and/or employees, without any fault on the part of the Claimant herein.

(5) The items of damages and injuries sustained by the Claimant, KEVIN JESTER, as known at this juncture, include: diminished renal function; progression of end-stage kidney disease; loss of a viable donated kidney; diminished life expectancy and quality of life;

additional surgical procedures and other medical care; all with associated pain, suffering, and loss of strength and mobility.


Upon information and belief, the aforementioned injuries are permanent and progressive in nature, will require future medical care and treatment and possible surgical intervention, together with the risks attendant thereto, as well as the development of pain and suffering, the full nature and extent of which are unknown at this time.

Claimant will seek to charge the Respondents herein with all items of loss and damages allowable by law, including but not limited to past and future damages for medical, hospital, and other related expenses; past and future loss of earnings; past and future conscious pain and suffering; past and future loss of use and function; and past and future scarring and disfigurement.

Dated: November 15, 2022



KEVIN JESTER

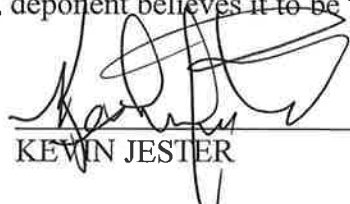


R. Colin Campbell, Esq.
CAMPBELL & ASSOCIATES
Attorneys for Claimant
38 Lake Street
Hamburg, New York 14075
(716) 992-2222

VERIFICATION

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

KEVIN JESTER, being duly sworn, deposes and says that he is the Claimant in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.

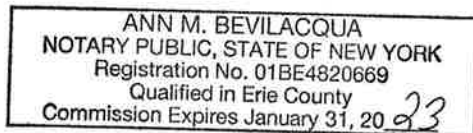


KEVIN JESTER

Sworn to before me this 15th
day of November, 2022.



Notary Public





JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 29, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Anderson, Maxwell v. Erie County Sheriff's Office, City of Buffalo, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Maxwell Anderson 4817 Kennison Parkway Hamburg, New York 14075
Claimant's attorney:	Steven M. Cohen, Esq. Hogan Willig 2410 North Forest Road Getzville, New York 14068

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

STATE OF NEW YORK : COUNTY OF ERIE

In the Matter of the Claim of

MAXWELL ANDERSON,

Claimant,

-against-

NOTICE OF CLAIM

CITY OF BUFFALO,
CITY OF BUFFALO POLICE DEPARTMENT,
ERIE COUNTY SHERIFF'S OFFICE,
ERIE COUNTY HOLDING CENTER
OFFICER JOHN DOE 1,
OFFICER JOHN DOE 2, and,
OFFICER JOHN DOE 3,

Respondents.

TO: CITY OF BUFFALO,
CITY OF BUFFALO POLICE DEPARTMENT,
ERIE COUNTY SHERIFF'S OFFICE,
ERIE COUNTY HOLDING CENTER
OFFICER JOHN DOE 1,
OFFICER JOHN DOE 2, and,
OFFICER JOHN DOE 3.

PLEASE TAKE NOTICE, MAXWELL ANDERSON, the Claimant herein, hereby makes a claim and demands against CITY OF BUFFALO, CITY OF BUFFALO POLICE DEPARTMENT, ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY HOLDING CENTER OFFICER JOHN DOE 1, OFFICER JOHN DOE 2, and OFFICER JOHN DOE 3, in their official capacities as a Buffalo Police Officer, and/or Erie County Deputy Sheriffs, pursuant to § 50-e of the General Municipal Law, as follows:

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

CLAIMANT

Maxwell Anderson
4817 Kennison Parkway
Hamburg, NY 14075

ATTORNEYS

HOGANWILLIG, PLLC,
Steven M. Cohen, Esq.
HOGANWILLIG, PLLC
2410 North Forest Road, Suite 301
Amherst, New York 14068

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

Assault; battery; excessive use of force; false imprisonment; false arrest; abuse of process; deprivation of liberty without due process of law; negligent infliction of emotional distress; intentional infliction of emotional distress; negligence; pattern and practice of harassment, false arrest; and, intimidation, negligent hiring, training and supervision, specifically by 3 unknown Buffalo Police Officers and/or Erie County Sheriff's Deputies, in their capacity as officer/employee/agent of the City of Buffalo Police Department, and/or Erie County Sheriff's Department; and or civilians employed thereby, for tortious conduct, negligent hiring training and supervision of police officers, and violation of Claimant's civil rights, all caused by the negligent, reckless, intentional and careless actions of City of Buffalo, the Buffalo Police Department and the 3 unknown Buffalo Police officers. The Claimant was illegally and unlawfully attacked, harassed, battered and seized, without just cause. The Claimant was also deprived of his Constitutional and civil rights without basis and/or reason. Claimant sustained physical injuries and economic loss as a result of Respondent's tortious actions.

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

On or about August 14, 2022, at approximately 2:00 a.m. on Franklin Street, near Chippewa, in the City of Buffalo, County of Erie, State of New York, Claimant was lawfully present and walking across the street when he was contacted by a motor vehicle that didn't see the Claimant. The Claimant was startled by the vehicle backing into him and did strike the trunk of the vehicle whose driver was unaware of Claimant's presence, in order to alert the driver to Claimant's presence. At the time of the incident there was no physical damage to the vehicle from the Claimant contacting the trunk. Further, no claim was brought by the driver, the driver apologized for not seeing Claimant, and no charges or civil suits were lodged by either the Claimant or the driver against the other.

The Claimant then continued to cross the street. The Claimant walked past three (3) Buffalo Police Officers standing at the corner of the intersection. Upon information and belief, the Buffalo Police Officers, and possibly Erie County Deputy Sheriffs, observed the events take place. However, they did not acknowledge or engage with Claimant at said time. Claimant continued walking to the end of the fence at Soho on Franklin Street. Once the Claimant arrived at this location he was suddenly, forcefully and without justification tackled from behind by a Buffalo Police Officer and/or an Erie County Deputy Sheriff. As a result of the assault and battery and physical attack, Claimant was forced to the ground, his head forcefully struck against and slammed to the ground, and he was placed by the officer face down on his stomach.

Claimant was subsequently put onto the back of a police car, searched without being advised of his *Miranda* rights, and rough handled by Respondents. The Claimant's physical stature did not allow him to easily fit into the back of the police car. Further, due to the claimant's physical

stature, the handcuffs did not fit his wrists. The handcuffs were applied so tightly that they dug into Claimant's wrists causing additional injury. As a result of the respondents conduct and attack and battery, Claimant was rendered sick, sore lame and disabled including his head, wrists and body.

On or about August 14, 2022, Claimant was held at the Erie County Holding Center, from approximately 3 a.m. until 9 a.m.. Claimant was wrongfully detained, wrongfully imprisoned, denied medical attention, isolated and was denied access to medical professionals to attend to his injuries, and denied access to a phone despite multiple requests to make a phone call. At approximately 7:30 a.m., an officer called the Claimant's mother to inform her of his arraignment. As the Claimant was taken out of the cell to be arraigned, he was unable to properly walk due to the severe injuries he sustained as a result of the conduct of the respondents. Claimant's ability to work, earn a living, and enjoy the comforts and pleasures of life has been impaired, and Claimant continues to suffer physical and emotional pain as a result of Respondent's conduct. Claimant was forced to endure baseless legal costs as well.


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

As a result of the respondents' conduct, the Claimant suffered the following injuries: Physical injuries to head, brain, concussion, cervical myofascial spasms, vestibular balance disorder (NOS), brain injury, cognitive disorder, speech impairment, papilledema, increased intracranial pressure, his ankles, knees, back, neck, head, and jaw; emotional injuries and psychological injuries in the form of sleep deprivation, severe mental anguish, anxiety, panic attacks, and post-traumatic stress, temporomandibular joint disorder (TMJ), eye injury, optic nerve damage, retrobulbar edema, dislocated jaw, cervical, back and neck injuries requiring trigger point injections in the neck, back and nerve blocks into the back of the head, and appliances for the

dislocated jaw, risk of seizures, and other pain and suffering. Claimant has been required to seek medical attention and medical treatment and has treated with and/or continues to treat for his injuries with multiple healthcare providers, including but not limited to neurologists, ophthalmologists, chiropractors, radiologists, physical therapists. The full extent of Claimant's injuries is presently unknown. Claimant has been rendered unable, ineligible and unfit to continue with his college football career. Claimant has incurred and will continue to incur medical expenses, loss of wages, loss of wage increases, loss of employment as well as other damages, financial, legal and ongoing costs, in an amount to be determined, and at this time claimed to be SEVEN MILLION FIVE HUNDRED THOUSAND (\$7,500,000) DOLLARS.

Said claim and demand is hereby presented for adjustment and payment.

Dated: Amherst, New York
November 7, 2022



Steven M. Cohen, Esq.
Robert P. Hamilton, Jr., Esq.
HOGANWILLIG, PLLC
Attorneys for Claimant
2401 North Forest Road, Suite 301
Amherst, New York 14068
Telephone: (716) 636-7600
scohen@hoganwillig.com

TO: City of Buffalo
Office of the Corporation Counsel
65 Niagara Square, 1100 City Hall
Buffalo, NY 14202

Buffalo Police Department
68 Court Street
Buffalo, NY 14202

Erie County Sheriff's Office
10 Delaware Ave.
Buffalo, New York 14202

Erie County Holding Center
40 Delaware Ave.,
Buffalo, New York 14202

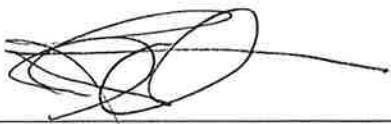
VERIFICATION

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

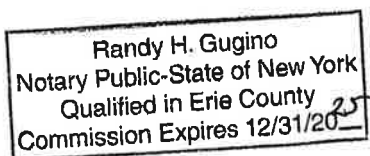
MAXWELL ANDERSON, being duly sworn, states that: I am the Claimant in the within action. I have read the foregoing Notice of Claim and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters; I believe them to be true.


Maxwell Anderson

Sworn to and subscribed
before me this 7 day of November, 2022.



Notary Public





JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 29, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Barrett, Bradley, an Infant, by Karra Barrett, PNG, v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Karra Barrett, PNG of Bradley Barrett 110 E. Milnor Avenue, Upper Lackawanna, New York 14218
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

THE MATTER OF THE CLAIM OF:

Karra Barrett, pro se, and Bradley Barrett, a minor child,
by and through his Parent and Natural Guardian,
Karra Barrett, pro se

RECEIVED
AUG 05 2022

ERIE COUNTY
DEPARTMENT OF LAW

vs.

Claimants,

NOTICE OF CLAIM

Erie County, Erie County Department of Social
Services, Rosemary Bapst, Jessica Pierson,
Paula Maue, and Yolanda Attaglo

Respondents.

TO:
ERIE COUNTY
95 Franklin St.
Buffalo, NY 14202

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES
158 Pearl St.
Buffalo, NY 14202

ROSEMARY BAPST
158 Pearl St.
Buffalo, NY 14202

JESSICA PIERSON
2875 Union Rd.
Cheektowaga, NY 14227

PAULA MAUE
2875 Union Rd.
Cheektowaga, NY 14227

YOLANDA ATTAGLO
2875 Union Rd.
Cheektowaga, NY 14227

PLEASE TAKE NOTICE, that the undersigned, KARRA BARRETT and BRADLEY
BARRETT, a minor child, by and through his Parent and Natural Guardian,

Karra Barrett, claim damages for emotional distress and mental anguish sustained by reason of

negligent infliction of emotional distress of ERIE COUNTY, ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, ROSEMARY BAPST, JESSICA PIERSON, PAULA MAUE, AND YOLANDA ATTAGLO, and in support thereof, Claimant states:

1. Claimants reside at 110 E. Milnor Ave., Upper, Lackawanna, NY 14218
2. The injuries began on February 2, 2021 and harm was ongoing until May 5, 2022
3. Upon information and belief, the claims, arose in the following manner: An application for return was signed by Claimant Karra Barrett's retained counsel on February 2, 2021. Said application was denied without a hearing on March 18, 2021. Respondent Yolanda Attaglo, by and through her attorney, Rosemary Bapst, filed a petition to remove Claimant Bradley Barrett from 1017 care of his maternal aunt, Kellie Barrett, without due diligence and investigating the precipitating factors. Ultimately, the child was placed in foster care for four nights, despite multiple other 1017s being available and against Department of Social Services Policy. Rosemary Bapst and Yolanda Attaglo refused to facilitate increased levels of visitation between Karra Barrett and Bradley Barrett and, indeed, advocated for reduced hours of visitation and even agency supervision which would have reduced visitation to two hours per week in an agency supervised setting. Yolanda Attaglo and Jessica Pierson lied about multiple facts in several different documents. When a different application for return was filed and ultimately heard, it was not held within 72 hours as required by law. In said hearing, Jessica Pierson, Paula Maue, and Yolanda Attaglo testified in support of not returning the child, Bradley Barrett, to his mother, Claimant Karra Barrett, despite Claimant Karra Barrett having no documented cases of relapse, missed appointments, urinalyses as well as following the menu. Paula Maue supervised the case while it was in the Children's Services Department.

4. As a result of said incident, the Claimants sustained mental anguish and emotional distress in the amount of \$858,000.

5. This notice is made and served on behalf of said Claimants, KARRA BARRETT and BRADLEY BARRETT, a minor child by and through his Parent and Natural Guardian, KARRA BARRETT, in compliance with the provisions of 50-h of the General Municipal Law and such other laws and statutes as are in the case made and provided.

6. You will take further notice that Claimants, KARRA BARRETT and BRADLEY BARRETT, a minor child by and through his Parent and Natural Guardian, KARRA BARRETT, demands payment of said claim and unless said claim is paid within a reasonable time, it is the intention of the Claimant to commence suit against ERIE COUNTY, ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, ROSEMARY BAPST, JESSICA PIERSON, PAULA MAUE, and YOLANDA ATTAGLO.

DATED: Buffalo, New York
August 2, 2022 /


 (mother)

*[KARRA BARRETT and BRADLEY
BARRETT, a minor child, by and
through his Parent and Natural
Guardian, KARRA BARRETT
110 E. Milnor Ave., Upper
Lackawanna, NY 14218]*



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 29, 2022

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


Dear Mr. Graber:

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

File Name:	<i>Forbush, Catherine v. ECMCC, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Catherine Forbush PO Box 1032 Buffalo, New York 14207
Claimant's attorney:	Claimant is proceeding <i>pro se</i>

Should you have any questions, please call.

Very truly yours,


JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

NOV 09 2022

In the Matter of the Claim of

CATHERINE FORBUSH

- against-

CLAIMANT

NOTICE OF CLAIM

☐ Village ☐ Town ☐ City ☒ County of

ERIE COUNTY MEDICAL CENTER
ERIE COUNTY MEDICAL CENTER CORPORATION
VALUED HEALTH / GREAT LAKES HEALTH SYSTEM

TO: ☐ Village ☐ Town ☐ City ☒ County of ERIE

PLEASE TAKE NOTICE that the claimant herein hereby makes claim and demand against you as follows:

1. The name and post-office address of the claimant and of his/her attorney is:

Claimant

CATHERINE FORBUSH
POB 1032
BUFFALO, NY
14207

Claimant's Attorney

WILL ADVISE

2. The nature of the claim:

ILLEGAL / IMPROPER CPEP HOLD

3. The time when, the place where and the manner in which the claim arose: The incident occurred on _____, 20____, at or about _____ ☐ a.m. ☐ p.m.,

8/10/22 - 8/13/22

ECMC - CPEP

4. The items of damage or injuries claimed are:

They did not provide a safe / secure environment
as required, nor was I assessed within the 6 hr. time limit
paid !!

That said claim and demand is hereby presented for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant intends to commence an action on this claim.

Dated: 11/7, 20 22
Buffalo, New York

Catherine Forbush
Signature
CATHERINE FORBUSH
Print Name

STATE OF NEW YORK)
) ss.
COUNTY OF)

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

Catherine Forbush
Signature

Sworn to before me on this 7th
day of November, 20 24.

[Signature]
Notary Public

CAMERON JOSEF KUKLA
Notary Public, State of New York
01KU6408608
Qualified in Erie County
My Commission Expires 9/14, 2024



JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 29, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Scherrer, Jodie A. v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Jodie A. Scherrer 242 Greene Avenue, Apt. 4L Brooklyn, New York 11238
Claimant's attorney:	John J. Fromen, Jr., Esq. John J. Fromen Attorneys at Law, P.C. 4367 Harlem Road Snyder, New York 14226

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

This paper received at the
Erie County Attorney's Office
from Ron Schwind on
the 27th day of October, 2022
at 11:42 a.m./p.m.
Alex Kuz
Assistant County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JODIE A. SCHERRER

Claimant

-vs-

NOTICE OF CLAIM

COUNTY OF ERIE,

Defendant

10/27 11:42
Ron Schwind

PLEASE TAKE NOTICE that JODIE A. SCHERRER hereby claims, and demands from the above-named Defendant, damages for personal injuries sustained by the Claimant, and for medical and hospital expenses incurred and/or to be incurred by the Claimant, together with permanent, disfiguring and debilitating injuries sustained by the Claimant as a result of the wrongful, unlawful, negligent, reckless and careless acts and omissions of the Defendant, its agents, servants, employees, appointees, designees, departments and/or divisions thereof, and in support thereof, the Claimant states the following:

1. The post office address of the Claimant is 234 Greene Avenue, Apt. 4L, Brooklyn, New York 11238; the name and post office address of Claimant's attorney is John J. Fromen, Jr., Esq., John J. Fromen, Attorneys at Law, P.C., 4367 Harlem Road, Snyder, New York 14226.

2. That the nature of this claim is for the wrongful, unlawful, negligent, reckless and careless acts and omissions of the COUNTY OF ERIE, its agents, servants, employees, appointees, designees, departments and/or divisions thereof, including without limiting thereto its Highway Department, in the ownership, design, construction, maintenance,

improvement, repair, inspection, alteration, changing, modification, noticing, signing, warning, signaling, mowing, foliage and vegetation trimming/removal, and upkeep of the intersection of Centerline Road and East Creek Road in the Town of Wales, County of Erie and State of New York, including without limiting thereto, the stop signs, right of ways and appurtenances adjacent thereto and connected therewith located at and in the vicinity of said intersection in the Town of Wales, County of Erie and State of New York, which resulted in the occurrence of a certain motor vehicle accident at the subject intersection involving the Claimant on July 30, 2022. At the aforesaid time and place, and while traveling south on East Creek Road, the Claimant was caused to come into collision with another motor vehicle at said intersection due to the Claimant's inability to see the stop sign located at the northwest corner of the subject intersection, which stop sign was blocked, obstructed and covered by vines and overgrown foliage as described by the investigating police officer in the Police Collision Report, a copy of which is attached hereto and made a part hereof and labeled Exhibit "A".

3. That said claim arose on July 30, 2022, at approximately 3:45 pm, at the intersection of Centerline Road and East Creek Road in the Town of Wales, County of Erie and State of New York; that the manner in which the claim arose was that on the aforesaid date and time, the Claimant, while traveling south on East Creek Road, was caused to come into collision with a motor vehicle being operated by one Savannah Swatlane in a westerly direction on Centerline Road at said intersection due to the presence of overgrown vegetation and vines obstructing and impeding the ability of motorists, including the Claimant herein, traveling southbound on East Creek Road to see

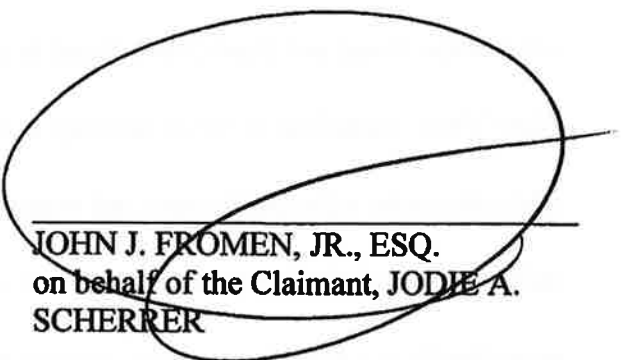
the stop sign located at the northwest corner of said intersection. The aforesaid stop sign was blocked, obstructed and covered by vines and overgrown foliage as described by the investigating police officer in the Police Collision Report as aforementioned. It is alleged that the COUNTY OF ERIE, its agents, servants, employees, appointees, designees, consulting project engineers, subcontractors and/or independent contractors affirmatively created, and/or had actual prior notice, and/or constructive notice, of said overgrown conditions and the resulting dangerous condition existing at the subject intersection and involving the signage thereat. The COUNTY OF ERIE, its agents, servants, employees, appointees, contractors, designees, departments, agencies and/or divisions thereof, did act wrongfully, unlawfully, negligently, recklessly and engaged in careless acts and omissions in the ownership, design, construction, maintenance, improvement, repair, inspection, alteration, changing, modification, noticing, signing, warning, signaling, mowing, foliage and vegetation trimming/removal, and upkeep of the intersection of Centerline Road and East Creek Road in the Town of Wales, County of Erie and State of New York, including without limiting thereto, the stop signs, right of ways and appurtenances adjacent thereto and connected therewith located at and in the vicinity of said intersection in the Town of Wales, County of Erie and State of New York, and more specifically the subject stop sign located at the northwest corner of said intersection; that as a result of said conditions and resulting incident, the Claimant sustained serious and permanent injury.

4. That so far as is now able to be determined, the primary injuries sustained by the Claimant include without limiting thereto, acute trauma to her right knee and leg,

together with additional injuries to her head, neck and back, the nature and full extent of which are unknown at this time. That by reason of the foregoing injuries, said Claimant became and will continue to be disabled and will continue to suffer pain, discomfort and distress, and has and will require the services of physicians, surgeons, nurses, hospitals, therapy, prosthetic devices, manipulations and medicines, and will continue to incur such expenses in the future; that as a result of the aforesaid injuries and the resulting permanent disabilities said Claimant has been incapacitated and will continue to be incapacitated in the future, and as a result of the aforesaid injuries and resulting permanent disabilities, said Claimant's professional, social and personal activities, endeavors and hobbies have been partially and/or totally impaired, all to the damage of said Claimant.

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

DATED: Snyder, New York
October 26, 2022



JOHN J. FROMEN, JR., ESQ.
on behalf of the Claimant, JODIE A.
SCHERRER

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

JOHN J. FROMEN, JR., ESQ., being duly sworn, deposes and says:

That your deponent is the attorney of record for the Claimant in the above-entitled action, and as such I am filing the within Notice of Claim on behalf of the Claimant; that your deponent has read the foregoing Claim, Notice and Statement, and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters your deponent believes the same to be true; the source of your deponent's knowledge and information is an investigation of this matter, documents and writings in your deponent's possession and actual conversations with the Claimants.



JOHN J. FROMEN, JR., ESQ.

Subscribed and sworn to before me
this 26th day of October, 2022.

Notary Public, State of New York
Qualified in Erie County
My commission expires 07/05/2023

EXHIBIT A

Local Codes
22-055381

R1EC33FQ3RMN

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (3/04)☐ AMENDED REPORT19
68

1. Accident Date Month: 07, Day: 30, Year: 2022		Day of Week: SATURDAY		Military Time: 15:45		No. of Vehicles: 2		No. Injured: 0		No. Killed: 0		Not Investigated at Scene: <input type="checkbox"/>		Left Scene: <input type="checkbox"/>		Police Photos: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		20
2. VEHICLE 1 - Driver License ID Number: 526712766 Driver Name - exactly as printed on license: SCHERRER, JODIE ADELLE Address (Include Number and Street): 294 QUINCY ST APT 3A City or Town: BROOKLYN, State: NY, Zip Code: 1121600 Date of Birth: 11/09/1962, Sex: F, Unlicensed: <input type="checkbox"/> , No. of Occupants: 02, Public Property Damaged: <input type="checkbox"/> Name - exactly as printed on registration: PV, HOLDING C Address (Include Number and Street): 23-45 87TH STREET City or Town: EAST ELMHURST, State: NY, Zip Code: 11369 Plate Number: KBU2396, State of Reg.: NY, Vehicle Year & Make: 2022 KIA, Vehicle Type: 4DSD, Ins. Code: 997 Ticket/Arrest Number(s): Violation Section(s):																		21
3. VEHICLE 2 - Driver License ID Number: 939744908 Driver Name - exactly as printed on license: SWATLAND, SAVANNAH GRACE Address (Include Number and Street): 13789 ROUTE 78 City or Town: SOUTH WALES, State: NY, Zip Code: 1413900 Date of Birth: 09/16/2001, Sex: F, Unlicensed: <input type="checkbox"/> , No. of Occupants: 01, Public Property Damaged: <input type="checkbox"/> Name - exactly as printed on registration: SWATLAND, paul p Address (Include Number and Street): 13789 ROUTE 78 City or Town: SOUTH WALES, State: NY, Zip Code: 1413900 Plate Number: JGB8751, State of Reg.: NY, Vehicle Year & Make: 1994 GMC, Vehicle Type: PICK, Ins. Code: 240 Ticket/Arrest Number(s): Violation Section(s):																		22
4. Check if involved vehicle is: <input type="checkbox"/> more than 85 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit. VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 Box 2 - Most Damage: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 Enter up to three more damage codes: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 Vehicle By: BACHS Towed To: BACHS VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT 14. UNDERCARRIAGE 17. DEMOLISHED 18. TRAILER 18. NO DAMAGE 19. OVERTURNED 19. OTHER																		23
5. Check if involved vehicle is: <input type="checkbox"/> more than 85 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit. VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 Box 2 - Most Damage: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 Enter up to three more damage codes: 4, 5, 6, 7, 8, 9, 10, 11, 12 Vehicle By: BACHS Towed To: BACHS																		24
6. Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles. Rear End, Left Turn, Right Angle, Right Turn, Head On, Sideswipe (same direction), Left Turn, Right Turn, Sideswipe (opposite direction) 7. ACCIDENT DIAGRAM 8. See the last page of the MV-104A for the accident diagram. 9. Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																		25
10. Reference Marker, Coordinates (if available), Latitude/Northing: 4737515, Longitude/Easting: 214430, Place Where Accident Occurred: County ERIE, City, Village, Town of WALES, Road on which accident occurred: CENTERLINE ROAD, at 1) intersecting street: EAST CREEK ROAD, or 2) feet, miles of, (Milepost, Nearest Intersecting Route Number or Street Name)																		26
11. Accident Description/Officer's notes Driver of Unit one did not see a stop sign which was covered by vines and overgrown foliage and crashed into Unit two. All drivers and passengers were evaluated by first aid and signed off. Unit two also hit a utility pole and a tree but neither were damaged.																		27

ALL INVOLVED

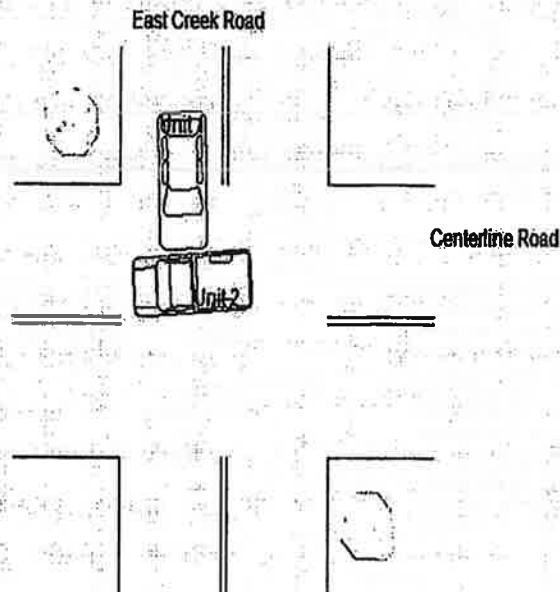
8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names of all involved	Date of Death Only
A	1.0	L.C.	4	L.C.	59	F	-	-	-	-	SCHERRER, JODIE ADELLE	
B	1.0	3.C	4	L.C.	27	F	-	-	-	-	BEASLEY, OLIVIA C	
C	2.0	L.C.	4	L.C.	20	F	-	-	-	-	SWATLAND, SAVANNAH GRACE	
D												
E												
F												
Officer's Rank and Signature: Deputy R. KOLMETZ, Badge/ID No. 0265, NCIC No. 01400, Precinct/Post Troop/Zone DW3, Station/Beat Sector E, Reviewing Officer BIEGASIEWICZ, SIMON, Date/Time Reviewed 08/08/2022 08:48												

Local Codes 22-055381
R1EC33FQ3RMN

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
 MV-104A (3/04)

☐ AMENDED REPORT

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene	Police Photos
Month 07	Day 30	Year 2022	SATURDAY	15:45	2	0	0	Accident Reconstructed <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No





JEREMY C. TOTH
COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

November 29, 2022

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

Dear Mr. Graber:

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

File Name:	<i>Gravelle, Shane v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Shane Gravelle 100 Minnard Street Lockport, New York 14094
Claimant's attorney:	Marc C. Panepinto, Esq. Dolce Firm, P.C. 1260 Delaware Avenue Buffalo, New York 14209

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SHANE GRAVELLE,

Claimant,

v.

COUNTY OF ERIE,

Respondents.

TO: **COUNTY OF ERIE**
Department of Law
95 Franklin Street
Room 1634
Buffalo, NY 14202

NOTICE OF CLAIM

This paper received at the
Erie County Attorney's Office
from David Kolter on
the 15th day of November, 2022
at 11:12 a.m./p.m.

Asa
Assistant County Attorney

PLEASE TAKE NOTICE that the claimant, Shane Gravelle, hereby makes a claim and demand against Erie County as follows:

1. Shane Gravelle (hereinafter claimant) resides at 100 Minnard street, Lockport, New York 14094.
2. The attorney for the claimant is Dolce Panepinto, P.C., with offices located at 1260 Delaware Avenue, Buffalo, New York 14209.
3. Upon information and belief, the present claim arises out of an incident which occurred on October 11, 2022 at approximately 8:30 am. at the Crane Branch Library on 633 Elmwood Avenue in the City of Buffalo
4. On or about October 11, 2022, petitioner Shane Gravelle, was employed by Oneida Sales & Service doing demolition/construction work at the Crane Branch Library on 633

Elmwood Avenue in the City of Buffalo, New York. During the course of his employment, claimant was caused to fall off a baker scaffold that was being used in connection with construction project. More specifically, the bakers scaffold tipped and the claimant was caused to fall as a result. Upon information and belief, the bakers scaffold was not properly constructed, placed and/or operated.

5. Upon information and belief, Respondent(s) Erie County was the owner of the building on which the claimant's incident took place. Upon information and belief, Respondent(s) Erie County was the owner of the above-described construction project on which the claimant was injured. Upon information and belief, Respondent(s) Erie County contracted for the above-described construction project to be carried out for its benefit.

6. Claimant alleges that respondent(s) Erie County owed him a duty to provide a safe place to work consistent with the requirements of Labor Law 200, 240 (1), and 241 (6). Claimant further alleged that respondent(s) Erie County owed her a duty to provide a safe place to work under the common law.

7. Claimant alleges that respondent(s) City of Buffalo its officers, employees, agents and/or servants violated Labor Law §§200, 240 (1), and 241 (6) and were negligent, careless and/or reckless in : failing to comply with all applicable provisions of the New York State Industrial Code (12 NYCRR 23), including but not limited to 23-1.7(d) &(e); 23-2.1(b); 23-5.1 (b), (c), (d), (f),(h) and,(j); and 23-5.18 (a), (b), (e), (f) , (g) and (h); failing to provide a safe place to work; failing to provide proper protection; failing to properly construct, place and operate the bakers scaffold; failing to ensure that all components of the bakers scaffold were in place and secured; failing to ensure that the scaffold was properly footed; failing to provide

adequate safety devices to prevent him from falling off baker scaffold; failing to repair or remove the improperly constructed or equipped baker scaffold from the job site; failing to inspect the bakers scaffold; failing to comply with other applicable safety standards including but not limited to OSHA; creating a hazardous condition and were otherwise negligent, careless and/or reckless in manners that claimant is unable to further specify because there is relevant information in the possession of respondent(s), its officers, agents, employees or servants and/or third parties.

8. The claimant alleges that as a direct result of the above-described incident, the violations of the applicable codes, and as a result of the negligence, carelessness and/or recklessness of the respondent(s) Erie County its officers, employees, agents and/or servants, the claimant was caused to sustain serious bodily injuries, including but not limited to his low back, neck, left hand, left wrist, left elbow, left shoulder, right leg, and right hip. The claimant reserves the right to make claim for any and all further injuries that may manifest as a direct result of the above-described incident, as well as for any consequential injuries that he may sustain.

9. The claimant has received medical care and treatment for his injuries, including but not limited to treatment by an ambulance service, a hospital emergency department, hospital internists and specialists and follow up outpatient care. The treatment rendered by those providers include a left wrist surgery, among other things. The claimant's injuries are on-going and progressive in nature and as such, he anticipates the need for on-going medical treatment into the future. He is making a claim for past and future medical expenses damages.

10. At the time of the incident, the claimant was a laborer employed by Oneida Sales & Service. Upon information and belief, he was earning a wage of approximately \$1,250.00 per week, in addition to a fringe benefits package. Upon information and belief, the claimant has

been disabled from his employment since the date of the incident to the present date. The claimant anticipates that he will continue to be disabled from his employment as a result of his causally related injuries. As such, he is making a claim for past and future lost wages and fringe benefits.

11. The claimant is further making a claim for past, present, and future pain and suffering.

12. The claimant hereby files a claim for damages for serious and permanent personal injuries, economic loss, medical expenses and conscious pain and suffering and changes in his lifestyle, all of which were caused by the statutory violations and negligence, carelessness, and recklessness of these respondent, its officers, agents, employees, and/or servants.

13. As a result of the foregoing, the claimant demands money damages from these Respondents for injuries sustained in the incident of October 11, 2022 which amount shall be supplemented at a later date consistent with nature, extent, treatment, duration and/or permanency of the injuries sustained.

WHEREFORE, the claimant, Shane Gravelle respectfully demands that this claim be adjusted and paid by the Respondent Erie County and further sets forth his intent to commence an action thereon if said claim is not adjusted and paid.

DATED: Buffalo, New York
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