

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

SARAH ELIZABETH L. TIERNEY,
Administrator of the Estate of JASON D. ARNO,
[REDACTED]
Buffalo, New York 14216

Claimant,

NOTICE OF CLAIM

vs.

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

CITY OF BUFFALO FIRE DEPARTMENT,
195 Court Street
Buffalo, New York 14202

Respondents.

**TO: CITY OF BUFFALO
CITY OF BUFFALO FIRE DEPARTMENT**

PLEASE TAKE NOTICE that Sarah Elizabeth L. Tierney, Administrator of the Estate of Jason Arno ("Claimant"), by and through her attorneys GIBSON MCASKILL and CROSBY, LLP, CHARLES S. DESMOND, II, ESQ., hereby claims and demands against the CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT as follows:

1. The name and post office address of the claimant is SARAH ELIZABETH L. TIERNEY, Administrator of the Estate of JASON ARNO, [REDACTED], Buffalo, New York 14216.

2. The name and post office address of the claimant's attorney is Gibson, McAskill and Crosby, LLP, 69 Delaware Avenue, Suite 900, Buffalo, New York 14202.

3. Pursuant to General Municipal Law §205-a, the claim arises out of an incident that occurred on March 1, 2023, when JASON ARNO, while carrying out, discharging and/or performing his duties as a firefighter within the course and scope of his employment with the CITY OF BUFFALO and/or THE OF CITY OF BUFFALO FIRE DEPARTMENT, was fatally injured at the premises known as “DC Theatrics” located at 745 Main Street in the City of Buffalo, County of Erie, State of New York.

4. The claim is for conscious pain and suffering, fear of impending death, wrongful death, loss of enjoyment of life, past and future lost wages, medical expenses, funeral expenses, lost pension benefits, lost social security benefits, loss of consortium, loss of household services, loss of parental care, nurturing and guidance, and attorneys’ fees arising from the March 1, 2023 incident.

5. Upon information and belief, the March 1, 2023 incident at issue, and the damages sustained as a result thereof, were caused by the negligence, recklessness and carelessness of the CITY OF BUFFALO and/or the CITY OF BUFFALO FIRE DEPARMENT, their agents, servants, representatives and/or employees as follows: in causing, permitting and/or allowing firefighters to enter the building at 745 Main Street, in the City of Buffalo, State of New York despite unreasonably dangerous conditions which existed and remained dangerous and/or unsafe before and during the course of the fire; in causing, permitting and/or allowing firefighters to enter the building at 745 Main Street, in the City of Buffalo, State of New York despite the knowledge that the building was vacant; in causing, permitting and allowing firefighters to enter a building that was immediately dangerous to life and health when said building was known to be vacant; in in causing, permitting and allowing firefighters to remain within a building that was immediately dangerous to life and health when said building was known to be vacant; in failing to properly

and/or sufficiently train and/or supervise JASON ARNO and his supervisors/superiors regarding relevant and applicable procedures, practices and protocols necessary to safely handle the situation presented; in failing to inspect, adequately inspect and/or properly inspect the firefighting equipment in light of the conditions presented; in failing to provide firefighting equipment that was reasonable and adequate to protect the life, safety, and/or health of JASON ARNO given the conditions presented, thereby causing, allowing and/or permitting the firefighting equipment provided to fail and preventing JASON ARNO and other firefighters from properly and adequately fighting the fire; in failing to follow proper mayday, bailout, evacuation and/or man down procedures; in failing to provide JASON ARNO and other firefighters with proper and adequate equipment including but not limited to gloves, turnout gear, panic buttons, mayday equipment, helmets, hoses and/or radios; in failing to keep JASON ARNO, an employee of the CITY OF BUFFALO and/or the CITY OF BUFFALO FIRE DEPARTMENT, free from injury while working within the course and scope of his employment; in failing to comply with the “two in/two out” policy, also known as 29 CFR 1910.134(g)(4)(i); in failing to ensure that at least two CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT employees remained in visual or voice contact with one another at all times while within an area that was immediately dangerous to life and health; in causing, allowing and/or permitting firefighters to act out of title without proper training; in causing, allowing and/or permitting firefighters to act out of title despite numerous, duly qualified, members of the CITY OF BUFFALO FIRE DEPARTMENT that were available to fill the positions; in failing to require acting lieutenants to attend flip school; in failing to use due care, caution, precaution and diligence; in hiring agents, servants and/or employees who were negligent, careless reckless and/or incompetent with respect to their management, supervision, inspection and execution of firefighting operations; in acting with negligence,

carelessness and recklessness in the planning, operation, management, and supervision of the of the firefighting operations at the 745 Main Street premises on March 1, 2023; in failing to provide JASON ARNO and the other firefighters with a place of employment that was reasonably free from recognized hazards that cause or are likely to cause death or serious physical harm and which would provide reasonable and adequate protection to the lives, safety and health of JASON ARNO and the other firefighters; and in violating Fire Prevention Law §426.9, O.S.H.A., P.E.S.H.A., Labor Law §27-a(3)(a)(1), National Fire Protection Association standards, NY 12 NCRR §800.3, 29 CFR §1910.134(g)(4)(i), 29 CFR §1910.156, 29 CFR §1910.138, NYS Civil Service Law §61(2), General Obligations Law §11-106.

6. The items and amounts of damages claimed have not yet been determined

7. Upon information and belief, Respondents', together with its agents', servants', employees', and/or representatives', negligence, recklessness, and carelessness directly and/or indirectly caused the injuries claimed herein.

8. That this claim comes within one or more of the exceptions of CPLR Section 1602, including but not limited to 1602(7).

9. This notice is made and served on behalf of said Claimant, in compliance with provision 50-E of the General Municipal Law and such other laws and statutes as are in the case made and provided.

18. Please take further notice that the Claimant demands payment of said claim, and unless said claim is paid in a reasonable time, it is the intention of the Claimant to commence suit against the Respondents.

Dated: Buffalo, New York
April 20, 2023

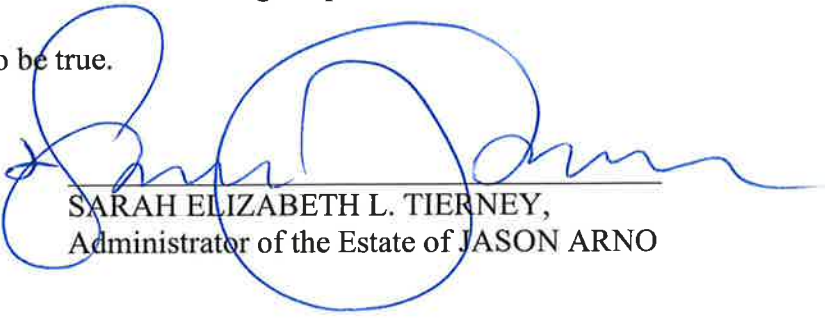
GIBSON, McASKILL & CROSBY, LLP

By: 
Charles S. Desmond, II, Esq.
Attorneys for Claimant
69 Delaware Avenue, Suite 900
Buffalo, New York 14202
Telephone: (716) 856-4200

VERIFICATION

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

SARAH ELIZABETH L. TIERNEY, Administrator of the Estate of JASON ARNO,
being duly sworn, deposes and says: I am the Claimant in this action and as such I have read the
foregoing Notice of Claim and know the contents thereof; and that the same is true to my
knowledge, except as to the matters therein stated to be alleged upon information and belief, and
that as to those matters I believe them to be true.



SARAH ELIZABETH L. TIERNEY,
Administrator of the Estate of JASON ARNO

Sworn to me this
20 day of April, 2023

Kelly Wodowski

Notary Public

KELLY ERIN WODOWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 18 25