

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERIE COUNTY, NEW YORK et. al

Defendants.

**NOTICE OF MOTION TO
DISMISS PURSUANT TO FRCP
12(b)(6)**

Civil Docket No. 09-CV-0849

PLEASE TAKE NOTICE that the above-named defendants, by their attorneys, CHERYL A. GREEN, Erie County Attorney, and KRISTIN KLEIN WHEATON, First Assistant County Attorney, will move before the Honorable William M. Skretny, United States District Court Judge, 68 Court Street, Part IV, 5th Floor, Buffalo, New York, on the **16th day of December, 2009, at 2:00 P.M.**, or as soon thereafter as counsel can be heard, for an Order: 1) dismissing Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; 2) alternatively, granting defendants thirty (30) days after a decision is rendered on this motion to file an answer; 3) awarding attorney's fees pursuant to 42 U.S.C. §1997a (b); and 4) granting such other and further relief as the court deems proper.

The grounds for this motion are more fully set forth in the supporting declaration of CHERYL A. GREEN, ESQ., Erie County Attorney, and Memorandum of Law which are submitted in support of this motion.

PLEASE TAKE FURTHER NOTICE that the defendants intend to file and serve reply papers. Therefore, pursuant to Local Rule 7.1(c), any papers in opposition to this motion must be filed and served at least eight (8) business days prior to the return date of this motion, or as otherwise ordered by the Court.

DATED: Buffalo, New York
October 21, 2009

CHERYL A. GREEN, ESQ.
Erie County Attorney and
Attorney for Defendants

By: /s/ Cheryl A. Green
CHERYL A. GREEN

By: /s/ Kristin Klein Wheaton
KRISTIN KLEIN WHEATON
First Assistant County Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2009 I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

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And, I hereby certify that I caused the foregoing to be mailed, by the United States Postal Service, first class mail, to the following non-CM/ECF participants:

NONE

/s/ Kristin Klein Wheaton
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