Submitted By:
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New York Supreme Court

APPELLATE DIVISION – FIRST DEPARTMENT

ADAN OROZCO,

Petitioner-Respondent,

against

THE CITY OF NEW YORK,

Respondent-Appellant.

BRIEF FOR PETITIONER-RESPONDENT

Appellate Division
Docket No.:
2021-01347

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PRELIMINARY STATEMENT

Adan Orozco (hereinafter "Petitioner-Respondent") submits this Respondent's Brief in response to the Appellellant's Brief submitted by the City of New York (hereinafter "Respondent-Appellant") by which the City of New York seeks reversal of a Decision and Order of the Supreme Court, New York County (Hon. Dakota D. Ramseur, J.S.C.), dated July 14, 2020 and entered on October 16, 2020. Contrary to the arguments raised by the Respondent-Appellant, it is submitted that the trial court properly granted the Petition for leave to file a late notice of claim and deem the notice of claim annexed to the Petition timely filed.

The trial court's grant of Petitioner-Appellant's Order to Show Cause and serve a late Notice of Claim was in adherenece to the law and facts of the case. In this respect, Petitioner-Appellant proffered: (i) that Respondent-Appellant acquired actual knowledge of the facts underlying the claims asserted against it by Petitioner-Respondent within 90 days after the claim arose; and (ii) no prejudice to Respondent-Appellant would result as a result of the late filing of the notice of claim.

COUNTER ISSUES PRESENTED

1. WHETHER NOTICE CAN BE IMPUTED TO THE CITY OF NEW YORK IN CASES INVOLVING CLAIMS FOR FALSE ARREST, FALSE IMPRISONMENT, ASSAULT, BATTERY AND MALICIOUS PROSECUTION

This question must be answered in the affirmative since the notice can be

imputed to the City of New York

2. WHETHER THE CITY OF NEW YORK WAS PREJUDICED BY THE DELAY

This question must be answered in the negative since the City of New York was not prejudiced by any delays since Respondent failed to set forth to demonstrate that it was actually prejudiced.

STATEMENT OF FACTS

Petitioner-Respondent was falsely arrested, falsely imprisoned, and maliciously prosecuted from an incident that occurred on August 13, 2018. After being in police custody over the course of five months, Petitioner-Respondent was released upon the favorable termination of the criminal proceedings against him, when all adverse charges were unconditionally dismissed on December 24, 2018.

Petitioner-Respondent filed the underlying Petition seeking leave to file a late notice of claim on July 23, 2020. As the trial court properly held, Petitioner-Appellant filed the Order to Show Cause to serve a late notice of claim within the expiry of the statute of limitations.

The Notice of Claim provides that the Petitioner-Appellant was falsely arrested, falsely imprisoned, illegally searched and seized by police officers employed by the New York City Police Department in violation of his civil right to be free from illegal searches and seizures. (R.30)

The Petitioner-Appellant filed a motion seeking leave to file a late notice of claim within the expiry of the statute of limitations for his state law claims. The trial court properly granted the petition.

ARGUMENTS

I. STANDARD TO FILE LATE NOTICE OF CLAIM

Pursuant to General Municipal Law ("GML") §50-1(a), a tort action against a municipality must be commenced by service of a notice of claim upon the municipality within 90 days of the date on which the claim arose.

The court's role on a motion for leave to serve a late notice of claim is very different than on a summary judgment motion. Unless the court determines that the application for leave to serve a late notice of claim is "patently meritless," the court should not reach the substantive merits of the claim. *In the Matter of Catherine G. v. County of Essex*, 3 N.Y.3d 175, 818 N.E.2d 1110, 785 N.Y.S.2d 369, (2004). Therefore, the general standard used to decide a motion for summary judgment under CPLR 3212 is not the standard for deciding whether to grant leave to file a late notice of claim under GML §50-2. The applicable standard does not require the plaintiff to demonstrate entitlement to judgment. It also does not require the plaintiff to prove the existence of factual questions respecting exposure, negligence, causation, contributory conduct or injury.

A court in its discretion may extend the time under GML §50-e to serve a Notice of Claim. *Acosta v. City of New York*, 39 A.D.3d 629, 834 N.Y.S.2d 267, 834 N.Y.S.2d 267 (2d Dep't 2007); *Christoforatos v. City of New York*, 285 A.D.2d 622, 728 N.Y.S.2d 675 (2d Dep't 2001). It is well-settled that when considering an application for leave to file a late notice of claim, the court should consider a number of factors, including: (i) the reasonableness of the excuse offered for the delay in filing the notice of claim; (ii) whether the municipality obtained actual knowledge of the essential facts constituting the claim within the 90-day as-of-right filing period or within a reasonable time thereafter; and (iii) whether the municipality was prejudiced because the claimant did not file during the as-of-right period. GML §50-e.

Therefore, a Court should consider all relevant facts and circumstances, whether there is a reasonable excuse for the delay, whether the public corporation acquired actual knowledge of the facts constituting the claim within 90 days or a reasonable time thereafter and whether the public corporation's defense would be substantially prejudiced by the delay. *Matter of D'Anjou v. New York City Health & Hosps. Corp.*, 196 A.D.2d 818 (2d Dep't. 1993). The Court in *Frith v. New York City Housing Authority*, 4 A.D.3d 390, 771 N.Y.S.2d 392 (2d Dep't 2004), held that a court should consider all relevant facts and circumstances when determining whether to permit service of a late notice of claim. *Frith*, *supra*.

It is well settled that the statute providing for a late Notice of Claim is remedial in nature and should be liberally construed. *Porcaro v. City of New York*, 20 A.D.3d 357, 357, 799 N.Y.S.2d 450 (1st Dept. 2005). The intent underlying the notice requirement is to protect the municipality from unfounded claims and to ensure that it has an adequate opportunity to explore the merits of the claim while information is still readily available. *Porcaro*, 20 A.D.3d at 358. The *Porcaro* court, in quoting *Teresta v. City of New York*, 304 N.Y. 440, 108 N.E.2d 397 (1952), held that "the statute, however, is not intended to operate as a device to frustrate the rights of individuals with legitimate claims." *Id*. Thus, the presence or absence of any one factor under GML §50-e is not determinative, and the absence of a reasonable excuse for the delay is not fatal. *Nardi v. County of Nassau*, 18 A.D.3d 520, 795 N.Y.S.2d 300 (2d Dep't 2006). *Barnes v. County of Onondaga*, 103 A.D.2d 624, 628, 481 N.Y.S.2d 539 (4th Dep't 1984), *affirmed*, 65 N.Y.2d 664, 481 N.E.2d 245, 491 N.Y.S.2d 613 (1985), citing *Bay Terrace Co-op. Section IV v. New York State Employees' Retirement System Policemen's & Firemen's Retirement System*, 55 N.Y.2d 979, 4343 N.E.2d 254, 449 N.Y.S.2d 185 (1982). The standards are flexible and the court may consider all other relevant facts and circumstances. *Beary v. City of Rye*, 44 N.Y.2d 398, 407, 377 N.E.2d 453, 406 N.Y.S.2d 9 (1960).

II. NOTICE CAN BE IMPUTED TO THE CITY OF NEW YORK

Whether a late notice of claim can be filed including the malicious prosecution and false imprisonment and arrest claims, GML § 50-e(5) provides, in relevant part, that courts shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including; ... and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits. *Melendez v City of NY*, 245 AD2d 564, 564 (2d Dept 1997) (reasons for permitting a late notice of claim include minimal delay beyond the statutory 90-day period, a respondent's possession of records containing the essential facts constituting the claim, and the absence of actual prejudice to the respondent in the preparation of its defense).

With respect to the City's acquisition of actual knowledge of the claims, in actions for false arrest and false imprisonment, "where the police department conducted an extensive investigation in which the District Attorney's Office joined, knowledge of the essential facts constituting the claims within the statutory period can be imputed to the City." *Grullon v City of NY*, 222 AD2d 257, 258 (1st Dept 1995) (permitting claims for false arrest and imprisonment).

Similarly, actual knowledge of a malicious prosecution claim can also be imputed to the City where the NYPD possessed all essential facts. *Nunez v City of NY*, 307 AD2d 218, 220 (1st Dept 2003).

NY Municipal Law Section 50-e (5) provides, in pertinent part, as follows:

> "Upon application, the court, in its discretion, may extend the time to serve a notice of claim specified in paragraph (a) of subdivision one.
>
> The extension shall not exceed the time limited for the commencement of an action by the claimant against the public corporation. In determining whether to grant the extension, the court shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one or within a reasonable time thereafter.
>
> The court shall also consider all other relevant facts and circumstances, including…whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits"

It is well settled that the courts have an inherent power, pursuant to New York Municipal Law Section 50-e, to grant leave to serve a late notice of claim. See *Cohen v. Pearl River*, 51 N.Y.2d 256 (1980). In *Beary v. City of Rye*, 44 N.Y.2d 398 (1978), the Court of Appeals explained that the standards of NY Municipal Law Section 50-e were modified, so that the grounds upon which a court may allow a late notice of claim were expanded, and the time for filing a notice of claim was lengthened.

The First Department, in *Townson v. New York City Health & Hosps. Corp.*, 158 A.D.3d 401 (1st Dep't 2018), confirmed that the "while the presence or absence of any one of the factors is not necessarily determinative, whether the municipality had actual knowledge of the essential facts constituting the claim is of great importance." (*Townson* affirmed the lower Court's decision granting leave to file late notice of claim, even though it found that the municipal hospital lacked timely actual knowledge, because it could not demonstrate substantial prejudice).

Both the First and Second Departments have repeatedly held that in cases where the police department and District Attorney's Office conducted investigations, and maintained records, related to the arrest, "knowledge of the essential facts constituting the claims within the statutory period can be imputed to the City." *Grullon v. City of New York*, 222 A.D.2d 257, 258 (1st Dept. 1995), *citing Tatum v. City of New York*, 161 A.D. 580, 581 (2nd Dept. 1990); see also *Justiniano v. New York City Hous. Auth. Police*, 191 A.D. 252 (1st Dept. 1993); *Matter of Reisse v. County of Nassau*, 141 A.D.2d 649 (2nd Dept. 1988); *Weinzel v. County of Suffolk*, 92 A.D.2d 545 (2nd Dept. 1983); *Ansaldo v. City of New York*, 92 A.D.2d 557 (2nd Dept. 1983). The First Department's decision, in *Justiniano v. New York City Hous. Auth. Police*, 191 A.D. 252 (1st Dept. 1993), expressly held that "Where, as here, the claim is for false imprisonment and malicious

prosecution, such knowledge may be imputed to the municipality through the officers in its employ who made the arrest or initiated the prosecution."

The First Department has very recently held that "the actual knowledge requirement contemplates actual knowledge of the essential facts constituting the claim, not knowledge of a specific legal theory." *Townson v. New York City Health & Hosps. Corp.*, 158 A.D.3d 401 (1st Dep't 2018). Additionally, where a municipal defendant possesses records which set forth the essential facts constituting a claim, courts generally hold that permission to file a late notice of claim should be granted. See *Rodriguez v. New York City Health & Hosps. Corp*, 270 A.D.2d 110 (1st Dept. 2000); *Melendez v. City of New York*, 245 A.D.2d 564 (2nd Dept. 1997) (reversing the trial court's denial of claimant's application to file a late notice of claim); *Guzman v. County of Westchester*, 208 A.D.2d 925 (2nd Dept. 1994); *Montalto v. Town of Harrison*, 151 A.D.2d 652 (2nd Dept. 1989); *Matter of Reisse v. County of Nassau*, 141 A.D.2d 649 (2nd Dept. 1988); *see generally Tatum v. City of New York*, 161 A.D.2d 580 (2nd Dept. 1990).

In this case, the Respondent-Appellant, the City of New York, had knowledge of the essential facts since the NYPD, its employees and agents, including the officers who participated in petitioner's arrest, were present at the scene of the incident and actively perpetrated the unlawful actions that now form the basis for petitioner's state law claims.

Pursuant to proper police procedure, the officers, agents, investigatory assistant district attorneys, investigators or any other variant thereof, who were involved in petitioner's arrest, detainment or malicious prosecution were required to maintain and utilize memo books and/or spiral notebooks to contemporaneously record factual details, especially those related to any probable cause determination. The officers were further required to generate detailed complaint follow-up reports ("DD5s") that are used to memorialize the factual circumstances particular to each case. The arresting officer must then provide all facts that may be relevant to the existence of probable cause to the District Attorney's office, so that the District Attorney's Office may properly evaluate the merits of a potential criminal prosecution and draft an accusatory instrument.

Petitioner-Respondent was illegally stopped, searched, seized, arrested by NYPD officers without reasonable suspicion or probable cause to do so. NYPD officers then removed petitioner against his will to a local NYPD precinct, where he was criminally processed and confined to a dank cell. Thereafter, Petitioner-Respondent was removed to central booking, where he would remain until his criminal court arraignment. Prior to said arraignment, the NYPD officers catalogued, recorded and/or memorialized all pertinent factual information to Petitioner-Respondent's arrest, albeit false and predicated upon fabricated accounts and observations, which said officers then forwarded to their supervisors and

prosecutors. During his five months incarceration, Petitioner-Respondent was compelled to make numerous personal appearances in court, until the criminal proceedings were terminated in his favor, via the unconditional dismissal of all adverse charges on December 24, 2018. During this period of time, said NYPD officers were obligated to be ready for the criminal trial of Petitioner-Respondent. Thus, between the time the Petitioner-Respondent was first detained and remained in custody until his favorable termination of all criminal charges, Respondent-Appellant, City of New York, by and through its employee police officers, unquestionably acquired and maintained actual knowledge of the essential facts constituting petitioner's state law claims.

Further, it is also unrefuted that members of the police department conducted extensive investigation in which the prosecutor's office joined in order to prosecute the Petitioner-Appellant. Under this circumstance, "knowledge of the essential facts constituting the claims within the statutory period can be imputed to the City." *Grullon v City of NY,* 222 AD2d 257, 258 (1st Dept 1995) (permitting claims for false arrest and imprisonment).

Further, where a municipal respondent possesses records, which set forth the essential facts constituting a claim, courts generally hold that permission to serve a late notice of claim should be freely granted. See *Rodriguez v. NYCH&HC,* 270 A.D.2d 110 (1st Dep't 2000); *Melendez v. City of New York,* 245 A.D.2d 564 (2d

Dep't 1997) (reversing the trial court's denial of Petitioner's application to serve a late notice of claim); *Guzman v. County of Westchester*, 208 A.D.2d 925 (2nd Dept. 1994); *Montalto v. Town of Harrison*, 151 A.D.2d 652 (2d Dep't 1989); *Matter of Reisse v. County of Nassau*, 141 A.D.2d 649 (2d Dep't 1988); see generally *Tatum v. City of New York*, 161 A.D.2d 580 (2d Dep't 1990).

Since the City's police officers falsely arrested and imprisoned Petitioner-Respondent, knowledge of his claim may be imputed to the City. See *Erichson v City of Poughkeepsie Police Dept*., 66 AD3d 820 (2d Dept 2009) (police department acquired actual knowledge of assault claim since employees of police department engaged in conduct alleged); *Ansong v City of New York*, 308 AD2d 333 (1st Dept 2003) (knowledge imputed to city where officers who arrested plaintiff had knowledge of events in question); *Justiniano v New York City Hous. Auth. Police*, 191 AD2d 252 (1st Dept 1993) (knowledge of malicious prosecution claim imputed to city since city's officers initiated prosecution). Knowledge derived from police arrest records may be considered actual or constructive notice to the City. See *Tatum v City of New York*, 161 AD2d 580 (2d Dept 1990), *lv denied* 76 NY2d 709 (1990).

In the case at bar, the City of New York had knowledge of the essential facts since the NYPD, its employees and agents, were present at the scene of the incident and, in fact, actively perpetrated the unlawful actions, such as fabrication

of observation and evidence that now form the basis for Petitioner-Appellant's state law claims.

Moreover, the City of New York has investigated the allegations that form the basis of the state law claims and have been in possession of records that adequately set forth the relevant facts, including detailed police reports and files maintained by the District Attorney's Office. Thus, the City of New York is in possession of records that provide it with actual knowledge of the essential facts of constituting the state law claims, which were obtained through the City's own investigation, and which were created by its own employees and agents. Therefore, the City of New York is already in possession ample information, which may also be used to refresh the recollections of any individuals involved.

III. THERE WOULD BE NO PREJUDICE TO THE CITY OF NEW YORK

In light of the City's knowledge of Petitioner-Respondent's claims, no prejudice would result if Petitioner-Respondent was permitted to file a late notice of claim. See *Nunez v City of New York*, (1st Dept 2003).

It is respectfully submitted that the City of New York has not demonstrated how it has been, or would be, prejudiced by Petitioner-Respondent's delay in filing his notice of claim. See *Grullon v City of New York*, 222 AD2d 257,258 (1st Dept 1995). The City merely argues in a conclusory fashion that it is prejudiced by the

delay since it would hinder its investigation. With all due respect, this argument is speculative since it did not provide any details as to how it would be prejudiced.

It is submitted that upon an initial showing of lack of prejudice to the City, the City was required to demonstrate particularized, substantial prejudice. *Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 466-467 (2nd Dept. 2016) (holding that the lower courts applied the incorrect legal standard by placing the burden solely on petitioner to establish lack of substantial prejudice and by failing to consider whether petitioner's initial showing shifted the burden to the School District).

Petitioner-Respondent's delay in filing timely notices of claim does not substantially prejudice the Respondent-Appellant's ability to defend the state law claims on the merits. In the *Matter of Gerzel v. New York City Health & Hospital Corp.*, 117 A.D.2d 549 (1st Dept. 1986), the court held that "[t]he only legitimate purpose served by Section 50(e) is to protect the public corporation against spurious claims and to assure it an adequate opportunity to explore the merits of the claim while information is still readily available." *Id.*, at 550 *quoting Teresta v. City of New York,* 304 N.Y. 440, 443. Additionally, in *Hayden v. Incorporated Village of Hempstead,* 103 A.D.2d 765 (2nd Dept. 1984), the court held that the mere passage of time does not constitute substantial prejudice. This Court in *Holmes v. City of New York*, 189 A.D.2d 676 (1st Dept. 1993) held that possession

of records by the municipal corporation like the City of New York constituted actual notice and defeated a claim of prejudice by the municipality.

It is respectfully submitted that this case is precisely the type of situation which the legislature envisioned when it empowered the court with the discretion to permit a late filing of a notice of claim to a public corporation. Having suffered through the indignity of a false arrest and imprisonment, with all of its attendant stress, expense and humiliation, it would certainly be highly prejudicial to the petitioners to be denied in their application to submit the Proposed Notice of Claim. Also, should the instant application be denied, the City will be still be defending Petitioner-Respondent's federal claims, which will require the same expenditure of time and resources.

The Petitioner-Respondent's delay in filing a timely notice of claim in this case does not substantially prejudice the City of New York's ability to defend petitioners' claims on the merits. The Court of Appeals, in its reversal of a lower court's denial of an application for leave to serve a late notice of claim, held that, although, the initial burden to demonstrate a lack of prejudice rests with the petitioner, "such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice." *Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455 (2016). The Court of Appeals further held that once there has been an initial

showing regarding the lack of substantial prejudice toward the public corporation or municipality, the public corporation or municipality is required "to rebut that showing with particularized evidence." *Id*. It is clear that the City of New York has failed to make such a showing, due to the lack of prejudice to the Respondent-Appellant.

Thus, the City of New York would not be unduly prejudiced by being compelled to defend a case, in which the underlying statute of limitations for the state law claims, one-year-and-ninety-days, has not yet run. *Sarjoo v. NYC H&HC,* 252 A.D.2d 449 (1st Dep't 1998) (noting that a court maintains discretionary power to grant permission to serve a late notice of claim, if the application is filed prior to the expiration of the applicable statute of limitations).

Further, it is notable that Petitioner-Respondent's Federal section 1983 claims are still viable, as those claims are not subject to New York State's notice of claim requirement and those claims may be commenced within three (3) years of the date of the injury. Accordingly, the individual officers and the City of New York cannot be prejudiced, as they will be compelled to defend the federal claims, nonetheless. *Owens v. Okure,* 109 S.Ct. 573 (1989); *Lui v. New York City Police Dept.*, 216 A.D.2d 67 (1st Dept. 1995).

It is also submitted that the Petitioner-Respondent's delay in serving a notice of claim in this case does not substantially prejudice the City of New York's ability

to defend said claims on the merits. The Court of Appeals held that, although, the initial burden to demonstrate a lack of prejudice rests with the petitioner, "such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice." *Newcomb v. Middle County Central School District*, 28 N.Y.3d 455 (2016). Further, the Court of Appeals also provided that once there has been an initial showing regarding the lack of substantial prejudice toward the public corporation or municipality, the public corporation or municipality is required "to rebut that showing with particularized evidence." *Id.* In this case, the Respondent-Appellant has failed to make that showing regarding the lack of substantial prejudice with particularized evidence. Rather, the Respondent-Appellant assertion that it is prejudiced is nothing more than conclusory statements.

Nevertheless, the City's investigation of the underlying crime for which the claimant was arrested and its continuing involvement until such time as he was released, reasonably precludes substantial prejudice arising from any impediments to an investigation of the civil claim. *Nunez v City of NY*, 307 AD2d 218, 220 (1st Dept 2003). The City does not sufficiently identify any particularized prejudice. Therefore, this factor supports the grant for leave to file a late notice of claim.

IV. LACK OF REASONABLE EXCUSE IS NOT FATAL

It is well settled that plaintiff's failure to establish any of the factors set forth in GML § 50-e (5) is not necessarily determinative, and the absence of a reasonable excuse for the delay is not necessarily fatal to an application seeking leave to file a late notice of claim. See *Matter of Dell'Italia v. Long Is. R.R. Corp.*, 31 A.D.3d 758, 759 (N.Y. App. Div. 2006); *Matter of Chambers v. Nassau Co. Health Care Corp*., 50 A.D.3d 1134 (2d Dept. 2008); *Nardi v. County of Nassau*, 18 A.D.3d 520 (2d Dept. 2005). Rather, all relevant factors are to be considered, in particular, whether respondent acquired actual knowledge of the essential facts constituting the claim within the 90-day statutory period or shortly thereafter.

The United States Supreme Court, in *McDonough v. Smith*, 139 S. Ct. 2149 (2019), recognized that many civil rights claims will first accrue prior to the resolution of the underlying criminal proceeding, and that numerous pragmatic concerns and difficulties will result from contemporaneous criminal and civil proceedings, which are predicated upon an identical set of facts. The Supreme Court, therefore, held that the tolling principle, first set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994), should not be limited to circumstances in which there is extant conviction, but should also apply to toll the relevant statute of limitations, where there is ongoing criminal prosecution. *McDonough v. Smith*, 139 S. Ct.

2149, 2160 (2019). The Supreme Court's decision was predicated on the profound realization that -

> [a] significant number of criminal defendants could face an untenable choice between (I) letting their claims expire and (2) filing a civil suit against the very person who is in the midst of prosecuting them. The first option is obviously undesirable, but from a criminal defendant's perspective the latter course, too, is fraught with peril: He risks tipping his hand as to his defense strategy, undermining his privilege against self-incrimination, and taking on discovery obligations not required in the criminal context. (internal citations omitted). Moreover, as noted above, the parallel civil litigation that would result if plaintiffs chose the second option would run counter to core principles of federalism, comity, consistency, and judicial economy. *McDonough v. Smith,* 139 S. Ct. 2149, 2158 (2019).

In the case at bar, Petitioner-Respondent was unable to serve a timely notice of claim upon the City of New York, because Petitioner was in custody and understandably focused upon defending his innocence and achieving a favorable resolution of the underlying criminal matter. As Petitioner-Respondent was contesting the criminal charges levied against him, he was understandably preoccupied with achieving vindication, which was logical considering an adverse finding of guilt would effectively preclude Petitioner-Respondent from bringing any civil claims at all. Additionally, Petitioner-Respondent contacted various attorneys regarding legal representation for his civil claims, but was unable to retain one during the pendency of his criminal matter.

Further, the service of a notice of claim would have required Petitioner-Respondent to appear for an oral examination conducted by the attorneys for the very same officers who violated his rights, in which he would be compelled to waive his right to remain silent, as well as other significant rights that is afforded to criminal defendants, but not civil plainitffs. Petitioner-Respondent should not be placed in such an untenable position, one that requiresd the forfeiture of one right, before another can be restored. Further, the Petitioner-Respondent was disadvantages due to his prolonged confinement, until December 24, 2018. In addition, the difficulty in filing a notice of claim was further compounded due to Petitioner-Respondent's minimal understanding of the English language and his permanent residency and domicile in California.

Moreover, the pandemic also negatively impacrted Petitioner-Respondent's ability to retain counsel. Due to the ongoing global pandemic, Petitioner-Respondent was unable to obtain necessary documentation related to his arrest, confinement and prosecution. Petitioner-Respondent was not provided any documentation regarding his arrest and detainment upon his release from custody. Petitioner-Respondent was never told why he was released from custody or why his case was dismissed. As such, the Respondent-Appellant should not benefit from withholding information from Petitioner to prevent the assertion of claims by

the Petitioner-Respondent. Therefore, it is respectfully submitted that these are reasonable excuses for the delay.

CONCLUSION

Simply stated, Respondent-Appellant had notice of the essential facts underlying Petitioner-Respondent's state law claims within the statutory, ninety (90) day, limitations period. The City of New York had actual knowledge of these facts from their own investigative efforts and through the actions and records of their own employees and agents. Finally, there has been no claim of substantial prejudice made by the Respondent-Appellant.

For all of the reasons set forth above, the decision and order of the trial court should be affirmed.

Petitioner-Respondent prays that this Court will grant the relief requested and provide such further relief, which the Court deems equitable and just.

Dated: Bayside, New York
August 10, 2021

Respectfully Submitted,

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PRINTING SPECIFICATIONS STATEMENT

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