Bronx County Clerk's Index No. 806290/2021E

New York Supreme Court
Appellate Division: First Department

LUIS JAIME,

Petitioner-Respondent,

against

THE CITY OF NEW YORK,

Respondent-Appellant.

Case No. 2021-02848

MOTION FOR LEAVE TO APPEAL

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel
of the City of New York
Attorney for Appellant
100 Church Street
New York, New York 10007
Tel: 212-356-1671 or -0853
ldisilvi@law.nyc.gov

RICHARD DEARING
INGRID R. GUSTAFSON
LORENZO DI SILVIO
of Counsel

June 21, 2022

Bronx County Clerk's Index No. 806290/2021E

New York Supreme Court
Appellate Division: First Department

LUIS JAIME,

Petitioner-Respondent,

against

THE CITY OF NEW YORK,

Respondent-Appellant.

Case No. 2021-02848

NOTICE OF MOTION FOR LEAVE TO APPEAL

PLEASE TAKE NOTICE that upon the annexed memorandum and affirmation, appellant City of New York will move this Court, located at 27 Madison Avenue, New York, New York 10010, on July 5, 2022, at 10:00 a.m., or as soon thereafter as counsel can be heard, for leave to appeal from the order of this Court entered on May 19, 2022, and for such other relief as the Court may deem just and proper.

Dated: New York, New York
June 21, 2022

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel
of the City of New York
Attorney for Appellant

By: _____
LORENZO DI SILVIO
Assistant Corporation Counsel

100 Church Street
New York, New York 10007
212-356-1671
ldisilvi@law.nyc.gov

To: Samuel DePaola
SIM & DEPAOLA, LLP
42-40 Bell Boulevard, Suite 405
Bayside, New York 11361
718-281-0400
Attorney for Respondent

Bronx County Clerk's Index No. 806290/2021E

New York Supreme Court
Appellate Division: First Department

LUIS JAIME,

Petitioner-Respondent,

against

THE CITY OF NEW YORK,

Respondent-Appellant.

Case No. 2021-02848

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel
of the City of New York
Attorney for Appellant
100 Church Street
New York, New York 10007
Tel: 212-356-1671 or -0853
ldisilvi@law.nyc.gov

RICHARD DEARING
INGRID R. GUSTAFSON
LORENZO DI SILVIO
of Counsel

June 21, 2022

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (cont'd)

Page(s)

TABLE OF AUTHORITIES (cont'd)

Page(s)

Statutes

PRELIMINARY STATEMENT

This case raises a purely legal question of statewide import: whether a petition for leave to serve a late notice of claim is enough to impute "actual knowledge" of the claim's essential facts to a municipality based solely on allegations that a municipal employee committed an intentional tort or was present during an unintentional one. The Court in this case found that petitioner Luis Jaime's bare allegations that Rikers Island correction officers "and/or" other inmates assaulted him met that standard. Because that holding has exacerbated intra- and inter-departmental splits and also conflicts with binding Court of Appeals precedent, this Court should grant leave to appeal so the Court of Appeals can definitively resolve this important question.

Just last year, this Court acknowledged that its decision in *Matter of Orozco v. City of New York*, 200 A.D.3d 559 (1st Dep't 2021), created a split both within its case law and between its decisions and those of the Second Department as to intentional torts, and the City's motion for leave to appeal in that case is pending with the Court. The decision here deepens and extends

that split by applying *Orozco*'s reasoning to unintentional torts as well.

This Court's decision conflicts with binding precedent on a second level. The Court of Appeals has held that bare allegations do not satisfy a petitioner's burden to show that a municipality timely acquired actual knowledge. Rather, the Court has required petitioners to adduce evidence not only that the municipality is aware of an injury, but also that it is aware of the essential facts constituting the claim. But Jaime presented zero evidence of that.

These issues are unquestionably of statewide importance. The notice of claim statute applies across the State and reflects a public policy judgment by the Legislature that municipalities should be protected from stale claims and have a timely opportunity to investigate and settle potential tort suits against them. Yet countless tort claims against municipalities will involve the acts or omissions of municipal employees. Holding that allegations of mere presence or participation are enough to impute actual knowledge of a potential lawsuit to a municipality nullifies the notice-of-claim requirement in a wide universe of cases.

QUESTION PRESENTED

For purposes of a petition for leave to serve a late notice of claim under General Municipal Law ("GML") § 50-e(5), may actual knowledge be imputed to a municipality based solely on an unsupported allegation that its employees either perpetrated or witnessed a tort?

OVERVIEW OF THE CASE

A. Jaime's unsworn, vague allegations that corrections officers "and/or" other inmates assaulted him

Through virtually identical, unsworn, and unverified notices of claim, Jaime alleged that on five occasions between June 2019 and October 2020, corrections officers "and/or inmates" at Rikers assaulted him (Record on Appeal ("R") 27, 34, 41, 48, 55). He named the same five corrections officers as allegedly among his "numerous" assailants for four of the incidents, and listed three other officers as among his assailants for the fifth (*id.*). According to Jaime, he received medical treatment after each incident. But he offered only two specifics: he claims that he suffered a fractured arm after the first and had to have stitches to his index finger after the second and third (*see id.*).

Apart from those few details, Jaime's allegations were not only full of identical boilerplate, but also vague about the precise nature of his claims, including whether he was asserting claims for negligence against the City or instead alleging an intentional tort. For instance, he asserted in conclusory fashion that the City had not provided adequate supervision at Rikers, and had thus failed to safeguard him from a foreseeable risk of physical harm from other inmates—suggesting that inmates had assaulted him, such that his claim against the City would rest on his allegations that corrections officers did not intervene (*id.*). But at the same time, Jaime also alleged that officers may have been among his assailants (*see id.*)—suggesting that the perpetrators were officers, not other inmates.

B. Jaime's petition for leave to serve five late notices of claim, supported by no evidence that the incidents even occurred or were reported, or that the City had notice of the essential facts underlying his claims

Under GML § 50-e, Jaime had until September 19, 2019, to serve a notice of claim for the first alleged assault and until January 6, 2021 for the last (*see* R11). *See* GML § 50-e(1)(a); *id.* § 50-i(1)(a). Jaime indisputably did not meet these deadlines.

Instead, he sought leave to serve the five late notices of claim on the City—seven months after the latest alleged incident, and almost two years after the first (R10–24).

This Court has repeatedly recognized that, in determining whether to grant leave to serve a late notice of claim, actual knowledge of the essential facts constituting a claim on the part of the municipality is the "most important factor" for a court to consider. *E.g.*, *Matter of Corwin v. City of New York*, 141 A.D.3d 484, 489 (1st Dep't 2016) (quotation marks omitted). The Court has reached this conclusion by emphasizing not only the placement of actual knowledge in the statute, *see* GML § 50-e(5) (directing courts to consider actual knowledge "in particular"), but also the fact that actual knowledge can serve as a fair substitute for timely notice of a claim, such that a municipal defendant would know to start a prompt investigation and preserve relevant evidence. *See, e.g.*, *Gibbs v. N.Y.C. Health & Hosps. Corp.*, 101 A.D.3d 557, 558 (1st Dep't 2012); *Padilla v. N.Y.C. Dep't of Educ.*, 90 A.D.3d 458, 459 (1st Dep't 2011); *see also* GML § 50-e(5).

Here, instead of offering evidence to establish that the City had timely actual knowledge of the essential facts constituting his claims, Jaime supported his application only with a speculative affirmation from his attorney (*see* R10–24). In that affirmation, Jaime's attorney flatly asserted that the City had timely notice simply because Jaime alleged, in identical boilerplate, that employees of the New York City Department of Corrections (DOC) had been involved in or present for the alleged assaults, and that (to the extent Jaime was even alleging an intentional tort) the employees acted deliberately (R12–15, 17, 22–23). The attorney did not attach any records in DOC's possession relating to any of the alleged incidents. Nor did the attorney describe any diligent efforts his client had made to obtain copies of records he believed could show actual knowledge, or explain what information within such records, if any, would have given the City notice that Jaime was likely to assert a negligence or assault-and-battery claim, especially when the notices are unclear whether the alleged assailants were corrections officers, other inmates, or both.

Jaime's attorney also sought to satisfy his client's initial burden to show that a grant of leave would not prejudice the City by again referring to the records DOC supposedly created, but which he did not provide to the court (R18–19). And the attorney sought to excuse Jaime's substantial delay in seeking leave by flatly claiming that his client was "understandably devoted" to his criminal trial (which had no stated connection to the assaults alleged here); had difficulty retaining an attorney to represent him in this case (without providing any details, or even explaining when Jaime first contacted him); and could not have sought leave sooner because of the Covid-19 pandemic (which began *after* three of the five alleged incidents) (R21).

For the first time on reply, Jaime's attorney did submit what appear to be various grievances that his client had filed with DOC. But those records did not address any of the incidents here, and at most showed that Jaime knew how to file complaints when he felt that he had been injured, but evidently did not do so for the assaults he alleged in this case (*see* R68–77).

C. Supreme Court's order granting leave, and this Court's affirmance

The City opposed the petition on the grounds that Jaime had failed to establish either that the City had actual knowledge of the essential facts constituting his claims or that it was not prejudiced by Jaime's delay (R61–66). Supreme Court granted the petition in a two-sentence order (R5).

In a decision entered May 19, 2022, this Court affirmed. *See Matter of Jaime v. City of New York*, __ A.D.3d __, 2022 N.Y. App. Div. LEXIS 3252, at *1 (1st Dep't May 19, 2021). Relying on *Matter of Orozco v. City of New York*, 200 A.D.3d 559 (1st Dep't 2021), and *Matter of Ansong v. City of New York*, 308 A.D.2d 333 (1st Dep't 2003), the Court held that the City had actual knowledge of Jaime's claims by virtue of his unsupported assertion that corrections officers had either perpetrated or witnessed the alleged assaults and therefore would "have had immediate knowledge of the events giving rise to this dispute." 2022 N.Y. App. Div. LEXIS 3252, at *1. Because the Court determined that the City had actual notice, the Court found that the City would suffer no prejudice from the grant of leave, and further noted that the City's argument on reasonable

excuse was unpreserved and in any event not ground enough to deny Jaime leave. *Id.* at *1–2.

REASONS TO GRANT LEAVE

For three reasons, this Court should grant the City leave to appeal. *First*, the Court's holding that a municipality acquires timely actual knowledge of the essential facts constituting a claim whenever a petitioner alleges that a municipal employee was involved in or present for a tort has deepened both intra- and inter-departmental splits that the Court of Appeals should address. *Second*, by ruling that a petitioner may establish a municipality's actual knowledge without adducing any evidence that the alleged incidents even occurred, let alone evidence that the municipality had actual knowledge of the essential facts constituting a claim based on those incidents, the decision in this case is in conflict with prior decisions of the Court of Appeals. And *third,* the purely legal issues this case presents are recurring matters of statewide importance that the Court of Appeals should resolve definitively.

A. This Court's decision deepens an appellate split about whether actual knowledge may be imputed to a municipality based on an employee's alleged involvement or presence alone.

As this Court's decision acknowledges, *see* 2022 N.Y. App. Div. LEXIS 3252, at *1, it is not clear whether Jaime is alleging that corrections officers assaulted him or that they failed to protect him from other inmates (*see* R27, 34, 41, 48, 55). But regardless of whether the officers assaulted Jaime or instead only "witnessed the incidents," the Court concluded that allegations on either front sufficed to show actual knowledge. *See* 2022 N.Y. App. Div. LEXIS 3252, at *1. But to the extent this Court held that the alleged involvement of a municipal employee in a possible intentional tort is enough, the Court has deepened intra- and inter-departmental splits that this Court acknowledged just last year in its decision in *Matter of Orozco*. And to the extent the Court held that the alleged presence of a municipal employee during the commission of an unintentional tort satisfies a petitioner's burden on actual knowledge, that too conflicts with prior case law from this Court and other Departments of the Appellate Division.

In *Orozco*—an essential building block of this Court's finding of actual notice in this case—the Court divided on the question of whether "actual knowledge of the essential facts constituting the claim," *see* GML § 50-e(5), can be categorically imputed to a municipal defendant based solely on the alleged involvement of one of its employees in an intentional tort. Indeed, the majority acknowledged that a split in this Court's case law had recently emerged on the issue. *Compare* 200 A.D.3d at 562, *with Matter of Singleton v. City of New York*, 198 A.D.3d 498, 499 (1st Dep't 2021) (that City employees arrested petitioner insufficient, by itself, to afford actual notice). The City has moved this Court for leave to appeal to the Court of Appeals in *Orozco*, and that motion remains pending. *See Matter of Orozco v. City of New York*, Case No. 2021-01347, NYSCEF Doc. No. 9). In both *Orozco* and this case, leave is warranted based on this split alone.

The conflict created by *Orozco* and this case extends beyond this Court, however, as these decisions depart from rulings of other Departments of the Appellate Division as well. As the majority in *Orozco* acknowledged, *see* 200 A.D.3d at 563 n.2; *id.* at 564–65

(Moulton, J., dissenting), imputing actual knowledge of the essential facts constituting a claim to a municipality whenever a municipal employee is allegedly involved in committing an intentional tort conflicts with recent decisions of the Second Department. That court has held just the opposite. *See, e.g.*, *Matter of Nicholson v. City of New York*, 166 A.D.3d 979, 980 (2d Dep't 2018); *Matter of Islam v. City of New York*, 164 A.D.3d 672, 674 (2d Dep't 2018); *Matter of Ruiz v. City of New York*, 154 A.D.3d 945, 946 (2d Dep't 2017). And the conflict reaches the Third Department as well. *See, e.g.*, *Matter of Sandlin v. State*, 294 A.D.2d 723, 724 (3d Dep't 2002) (State had no actual knowledge of inmate's claim that corrections officers had assaulted him, even crediting his bald allegation that State investigated and prepared reports).

Moreover, in ruling that Jaime could carry his burden to show actual knowledge even if the corrections officers had only witnessed other inmates assaulting him and acted negligently in failing to protect him, *see* 2022 N.Y. App. Div. LEXIS 3252, at *1, this Court created a second split. Just last year, the Court concluded that another Rikers inmate could not show actual knowledge based

solely on his conclusory claim that corrections officers had failed to protect him from other inmates. *See Matter of Figueroa v. City of New York*, 195 A.D.3d 467, 468–69 (1st Dep't 2021). In particular, the Court held that a petitioner seeking leave to assert an untimely negligence claim must offer some "evidence that records exist of the [alleged] incident" or, at the very least, a "first-hand description of the incident, or of any investigation that occurred in its aftermath," to establish actual knowledge. *Id.* But Jaime offered no such evidence, and this Court's decision conflicts with this recent case law as well.

This Court's decision also conflicts with well-settled precedent in the Second Department that the mere presence of a municipal employee is not enough to establish a municipality's actual notice of a claim. *See, e.g.*, *Matter of Kumar v. Dormitory Auth. of the State of New York*, 150 A.D.3d 1117, 1118 (2d Dep't 2017); *Matter of Anderson v. Town of Oyster Bay*, 101 A.D.3d 708, 709 (2d Dep't 2012); *Matter of Morrison v. N.Y.C. Health & Hosps. Corp.*, 244 A.D.2d 487, 488 (2d Dep't 1997). Discord between the First and

Second Departments presents particular challenges for the City of New York, which straddles both.

In sum, the rule that an employee's alleged involvement in an intentional tort or presence for an unintentional one imputes actual knowledge to their municipal employer has deepened or created splits both within this Court's case law and between its decisions and those of other Departments of the Appellate Division. A grant of leave would permit the Court of Appeals to resolve these conflicts in the law.

B. The decision in this case also conflicts with controlling Court of Appeals precedent.

This Court's decision also departs from prior decisions of the Court of Appeals requiring that a petitioner seeking leave to serve a late notice of claim adduce evidence, not offer mere speculation, to satisfy their burden to show that a municipality acquired timely actual knowledge of the essential facts constituting a claim. For example, in the medical malpractice context, both the Court of Appeals and this Court have made clear that evidence of actual knowledge is required, and that even the possession or creation of medical records "does not ipso facto establish" that a medical

provider acquired timely actual knowledge. *See, e.g.*, *Wally G. v. N.Y.C. Health & Hosps. Corp.*, 27 N.Y.3d 672, 677 (2016); *Umeh v. N.Y.C. Health & Hosps. Corp.*, __ A.D.3d __, 2022 N.Y. App. Div. LEXIS 3278, at *2 (May 24, 2022). Instead, the records must "evince" both that there was an injury and that it was inflicted by medical staff. *Wally G.*, 27 N.Y.3d at 677.

That rule cannot be squared with the Court's holding in this case that the alleged presence of municipal employees is enough to impute actual knowledge to a municipality. Like the police officers who were present for and documented the petitioner's arrest in *Orozco*, or the corrections officers who were allegedly present for and also required to document any incident at Rikers here, medical professionals are necessarily present for and must take detailed notes whenever they perform a procedure on a patient. Still, despite the presence of medical staff and the existence of *some* medical records memorializing what took place, the Court of Appeals has held that petitioners cannot carry their burden on actual knowledge on those grounds alone.

The Court of Appeals, the Second Department, and this Court have applied the same rule in other contexts. *See, e.g.*, *Washington v. City of New York*, 72 N.Y.2d 881, 883 (1988) (allegation that accident had been reported to City employees provided no "reliable basis" to find actual knowledge); *Matter of Clarke v. Veolia Transp. Servs., Inc.*, __ A.D.3d __, 2022 N.Y. App. Div. LEXIS 2160, at *2–3 (2d Dep't Apr. 6 2022) (bus operator's involvement in accident, without more, not enough to confer actual knowledge); *Matter of Kuterman v. City of New York*, 121 A.D.3d 646, 647 (2d Dep't 2014) (to establish actual knowledge, records must reflect facts from which municipal defendant could "readily infer … that a potentially actionable wrong had been committed"); *Alexander v. NYCTA*, 200 A.D.3d 509, 510 (1st Dep't 2021) (same). But this Court's decision excuses Jaime not only from the rule that the City must be able to infer from its records that an actionable wrong has been committed, but also the requirement that he produce the records he purports to rely on or at least some evidence that could show actual notice. *See, e.g.*, *Umeh*, 2022 N.Y. App. Div. LEXIS 3278, at *2–3; *Bornschein v. City of New York*, 203 A.D.3d 570, 570 (1st Dep't

2022); *Matter of Tavarez v. City of New York*, 26 A.D.3d 297, 297–98 (1st Dep't 2006) (petitioner had burden of procuring report she believed established defendant's actual knowledge).

Here, there is no dispute that Jaime did not submit *any* affidavit or evidence in support of his claim of actual knowledge, but instead relied solely on his attorney's bald assertion that the incidents occurred and that DOC must have prepared reports in response to each claimed assault. Because that result cannot be squared with existing appellate authority, leave is warranted on that ground as well.

C. The conflicts created by this Court's decision are of statewide import.

This Court should grant the City leave to appeal on the further ground that the conflicts created by this Court's decision are undeniably on issues of statewide importance. The Legislature enacted GML § 50-e, in part, to ensure that municipalities have an opportunity to investigate early and potentially settle claims against them, and drew no distinction between intentional conduct and negligent acts. *Matter of Beary v. Rye*, 44 N.Y.2d 398, 407 (1978). That is why actual notice is so essential; it facilitates an

early investigation allowing municipalities to "decide whether the case is one for settlement or litigation." *Rosenbaum v. City of New York*, 8 N.Y.3d 1, 11 (2006) (quotation marks omitted).

Thus, to the extent this Court's decision deepens the conflict over whether a municipality may be deemed to have acquired actual knowledge based solely on an employee's participation in an intentional tort, that result is significant. GML § 50-e does not distinguish between intentional and unintentional torts, and for any kind of tort, an investigation conducted within 90 days is markedly different from one conducted one-year-and-ninety days (or more) after an incident. That is why the Legislature requires judicial permission to serve a late notice claim with particular emphasis on actual knowledge of the essential facts constituting the underlying claim. *See* GML § 50-e(5). A rule excluding intentional torts from the shorter 90-day requirement by categorically imputing actual knowledge forces municipalities to either proactively investigate, say, every instance of an arrest that does not end in conviction or any assault claimed in a carceral setting (which may not have even been reported) within 90 days, or else

forfeit the benefits of prompt investigation in all intentional tort cases, contrary to the plain terms of the statute.

And in apparently extending this result to unintentional torts as well, this Court's decision only broadens the implications of *Orozco*. Local government employees will necessarily be present for or involved in a large number of tort claims asserted against a municipality, and imputing actual knowledge based solely on an employee's presence will deny the municipality the benefit of the notice-of-claim requirement in a host of cases. Either the municipality must investigate in every case, regardless of whether it has any records or other information that afford it actual knowledge that a wrong may have occurred in the employee's presence, or it must forego the protections of the statute.

With respect to both intentional and unintentional torts, that result cannot be squared with the plain language of GML § 50-e(5). In holding that unsworn allegations of intentional conduct by, or the mere presence of, a municipal employee are enough to show "actual knowledge of the essential facts of the claim," this Court automatically imputes an employee's knowledge of a purported

wrong to the municipality, regardless of whether there is any evidence that a wrong in fact occurred. But that result transforms constructive knowledge of an agent's action into actual knowledge of the essential facts constituting a claim. The Court of Appeals should resolve whether this rule is consistent with the language used in GML § 50-e, which requires *actual* knowledge.

Finally, because GML § 50-e applies statewide, the question of whether actual knowledge may be presumed based on an unsupported allegation that an employee engaged in intentional misconduct or even failed to intervene to prevent an injury has far-reaching implications. Critically, imputing knowledge anytime a detainee alleges that corrections officers "and/or" other inmates engaged in assault would "effectively vitiate" GML § 50-e's protections in that context across the state. *Olivera v. City of New York*, 270 A.D.2d 5, 6 (1st Dep't 2000) (quotation marks omitted). This effect would be felt most acutely in larger towns and cities, which "often will have numerous employees assigned to separate and diverse agencies or departments," *Caselli v. City of New York*, 105 A.D.2d 251, 255–56 (2d Dep't 1984), and vest a specific

municipal official, such as the New York City Comptroller, with the authority to settle pre-suit claims, *see* N.Y.C. Charter § 93(i).

CONCLUSION

This Court should grant leave to appeal its May 19, 2022 decision to the Court of Appeals.

Dated: New York, New York
June 21, 2022

Respectfully submitted,

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel
of the City of New York
Attorney for Appellant

By: _____
LORENZO DI SILVIO
Assistant Corporation Counsel

100 Church Street
New York, New York 10007
212-356-1671
ldisilvi@law.nyc.gov

RICHARD DEARING
INGRID R. GUSTAFSON
LORENZO DI SILVIO
of Counsel

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Gische, Kern, Friedman, Shulman, JJ.

15984 In the Matter of LUIS JAIME,
Petitioner-Respondent,

-against-

THE CITY OF NEW YORK,
Respondent-Appellant.

Index No. 806290/21E
Case No. 2021-02848

Georgia M. Pestana, Corporation Counsel, New York (Lorenzo Di Silvio of counsel), for appellant.

Sim & DePaola, LLP, Bayside (Sang J. Sim of counsel), for respondent.

Order, Supreme Court, Bronx County (Mitchell J. Danziger, J.), entered June 2, 2021, which granted the petition for leave to file a late notice of claim, unanimously affirmed, without costs.

Petitioner claims that from June 21, 2019 to October 8, 2020, in five separate incidents, he was attacked and assaulted by correction officers and/or inmates while incarcerated at Rikers Island. Petitioner moved for permission to file late notices of claim for each of the five incidents.

Respondent's claimed lack of actual knowledge is refuted by the fact that the officers who allegedly assaulted petitioner or witnessed the incidents would, as respondent's employees, have had immediate knowledge of the events giving rise to this dispute (*see Matter of Orozco v City of New York*, 200 AD3d 559, 560 [1st Dept 2021]; *Matter of Ansong v City of New York*, 308 AD2d 333, 333 [1st Dept 2003]). In light of respondent's knowledge of petitioner's claims, no prejudice would result if petitioner

were permitted to file a late notice of claim (*see Matter of Orozco*, 200 AD3d at 563). Furthermore, respondent has failed to make a particularized showing that the delay caused it substantial prejudice. Respondent's arguments as to the issue of reasonable excuse are unpreserved and, in any event, a lack of a reasonable excuse is not, standing alone, sufficient to deny an application for leave to serve and file a late notice of claim (*see Renelique v New York City Hous. Auth.*, 72 AD3d 595, 596 [1st Dept 2010]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 19, 2022

Susanna Molina Rojas
Clerk of the Court