Appellate Division, First Department, Docket No. 2021-02848
Bronx County Clerk's Index No. 806290/2021E

Court of Appeals
State of New York

LUIS JAIME,

Petitioner-Respondent,

against

THE CITY OF NEW YORK,

Respondent-Appellant.

MOTION FOR LEAVE TO APPEAL

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October 12, 2022

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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 20 Eagle Street, Albany, New York 12207, on October 24, 2022, at 10:00 a.m., or as soon thereafter as counsel can be heard, for leave to appeal from the order of the Appellate Division, First Department, entered on May 19, 2022, and for such other relief as the Court may deem just and proper.

Dated: New York, New York
October 12, 2022

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Court of Appeals
State of New York

LUIS JAIME,

Petitioner-Respondent,

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THE CITY OF NEW YORK,

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MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

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PRELIMINARY STATEMENT

This case deepens and extends a split among the Departments of the Appellate Division that is also the subject of a separate pending motion for leave filed by the City in *Matter of Orozco v. City of New York*, 200 A.D.3d 559 (1st Dep't 2021). Because the split concerns issues of statewide importance that frequently recur, and because this case illuminates distinct and significant facets of the problems that the split has created, the Court should grant leave in this case as well as in *Orozco*.

The First Department's decision in *Orozco* itself intentionally departed from its own precedent and also created a split between its decisions and those of the Second Department as to intentional torts. The decision here deepens and extends that split by applying *Orozco*'s reasoning to unintentional torts as well. Repudiating decades of precedent to the contrary, the First Department in this case found that petitioner Luis Jaime had shown the City's actual knowledge of his claims' essential facts simply by making the bare allegation that Rikers Island correction officers "and/or" other inmates had assaulted him. As that holding exacerbates intra- and

inter-departmental splits, and also conflicts with binding case law from this Court, the Court should grant leave to appeal to definitively resolve this crucial question of statewide importance.

The First Department's decision conflicts with binding precedent on a second level. This Court has held that bare allegations like those here 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 has notice of the essential facts constituting the claim. But Jaime presented zero evidence of either.

These issues are unquestionably of statewide importance. The notice of claim statute applies across the State and reflects the Legislature's public policy judgment that municipalities should be protected from stale claims and have a timely opportunity to investigate and settle potential tort suits against them. Yet the First Department's new rule turns this principle on its head and will allow countless tort claims against municipalities by

categorically imputing actual knowledge to the employer in New York and Bronx Counties.

The First Department's holding that allegations of mere presence or participation are enough to impute actual knowledge of a potential lawsuit to a municipality thus effectively nullifies the notice-of-claim requirement in a wide universe of cases. This Court should take this opportunity to make clear that the Legislature—in adopting a requirement that a plaintiff seeking to serve a late notice of claim show that the government had "actual knowledge of the essential facts constituting the claim," GML § 50-e(5)—meant what the plain, unambiguous statutory language states: actual knowledge.

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 categorically imputed to a municipality based solely on an unsupported allegation that its employees either perpetrated or witnessed a tort?

JURISDICTION AND TIMELINESS

This Court has jurisdiction over this appeal from a final order granting the petition for leave to file a late notice of claim under CPLR 5602(a)(1)(i). The City timely appealed New York County Supreme Court's final decision dated May 27, 2021 and entered on June 2, 2021 to the Appellate Division, First Department under CPLR 5701(a)(1). The First Department entered its decision affirming the order granting the petition on May 19, 2022. The City timely filed a motion for permission to appeal with the First Department, which that court denied on September 13, 2022, less than 30 days ago. Respondent has not served notice of entry of either the First Department's decision or the court's order on the City's motion.

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, and thus indicating 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—almost two years after the first and seven months after the last alleged incident (R10–24).

The standards governing late notice of claim applications are firmly established, with the municipality's actual knowledge of the essential facts constituting a claim 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). Courts prioritize that factor not only because the statute emphasizes it, *see* GML § 50-e(5) (directing courts to consider actual knowledge "in

particular"), but also because actual knowledge can serve as a fair substitute for a timely notice of a claim, by alerting a municipal defendant 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, 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 by virtue of Jaime's boilerplate allegation that employees of the New York City Department of Corrections (DOC) had been involved in or present for the alleged assaults, and that the employees had broadly acted "deliberately" (R12–15, 17, 22–23). The attorney neither provided nor referenced records that were in DOC's possession relating to any of the alleged incidents. The attorney described no steps, much less diligent efforts, that his client had made to obtain copies of relevant records over the intervening two years that would have put the City on notice that Jaime was likely to assert a negligence or assault-and-battery claim. Nor was the

petition supported by any first-hand account of the alleged incidents.

Jaime's attorney asked the court to presume that DOC records existed that would fill this void, though he neither identified nor provided those records to the court (R18–19). And the attorney variously sought to excuse Jaime's substantial delay with a series of excuses—Jamie was "understandably devoted" to an unrelated criminal trial; had unspecified difficulty retaining an attorney to represent him in this case; and could not have sought leave sooner because of the Covid-19 pandemic, even though the pandemic began *after* three of the five alleged incidents occurred (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 at issue here. And the records did unintentionally establish that Jaime knew how to file complaints about injuries he claims to have sustained, which makes his failure to tender comparable records covering the

incidents alleged here all that more perplexing and inexcusable (*see* R68–77).

C. Supreme Court's order granting leave, and the First Department'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, the First Department affirmed. *See Matter of Jaime v. City of New York*, 205 A.D.3d 544, 544 (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." 205 A.D.3d at 544. Because the court determined that the City had actual notice, it 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 544–45.

REASONS TO GRANT LEAVE

For three reasons, this Court should grant the City leave to appeal. *First*, the First Department's holding—that a municipality acquires timely actual knowledge of the essential facts constituting a claim whenever a petitioner baldly alleges, without any support, that a municipal employee was involved in or present for a tort—has deepened both intra- and inter-departmental splits that this Court 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 from this Court. And *third,* the purely legal issues this case presents are recurring matters of statewide importance that the Court should

resolve definitively because they all but eliminate the notice-of-claim requirement for intentional torts.

A. The First Department's decision deepens an appellate split on whether actual knowledge may be imputed to a municipality based on a mere allegation that an employee was involved in or witnessed the event in question.

As even the First Department's decision acknowledged, *see* 205 A.D.3d at 544, 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). Yet that ambiguity did not deter the court below from concluding that under either theory, mere allegations sufficed to show actual knowledge. *See* 205 A.D.3d at 544. To the extent the court meant to hold that the alleged involvement of a municipal employee in an intentional tort is enough, it further deepened intra- and inter-departmental splits that began with *Matter of Orozco*. And to the extent the court meant to apply the ruling to unintentional torts, that too conflicts with prior case law from multiple Departments of the Appellate Division.

In *Orozco*—the foundational building block of the First Department's finding of actual notice here—the court divided on

the question of whether GML § 50-e(5)'s actual knowledge factor could 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 the First Department's case law had recently emerged. *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 in *Orozco*, and that motion remains pending. In both *Orozco* and this case, leave is warranted based on this split alone.

But the conflict created by *Orozco* is broader than just the First Department. 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 whenever a municipal employee is allegedly involved in committing an intentional tort

directly conflicts with recent decisions of the Second Department.[1] 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* 205 A.D.3d at 544, the First Department created a second split. Just last year, the same 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 that case, the First Department held that a petitioner seeking leave to assert an

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[1] *See, e.g.*, *Parker v. City of New York*, 206 A.D.3d 936, 938 (2d Dep't 2022); *Matter of Grandberry v. City of New York*, 206 A.D.3d 654, 655 (2d Dep't 2022); *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).

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 the First Department did not require such evidence, before ruling in his favor, in conflict with its own recent case law.

In this respect, too, the First Department's decision conflicts yet again 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; records must be adduced that, based on the particular facts of the case, show actual notice on the part of the municipality. *See, e.g.*, *Matter of Wieman-Gibson v. Cty. of Suffolk*, 206 A.D.3d 666, 667 (2d Dep't 2022); *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); *Matthews v. NYCHA*, 180 A.D.2d 669, 669–70 (2d Dep't

1992). As discord between the First and Second Departments presents particular challenges for the City of New York, which straddles both Departments, leave to appeal is especially warranted.

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 the First Department's case law and between its decisions and those of other Departments of the Appellate Division. A grant of leave would permit this Court to resolve these growing conflicts in the law.

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

The First Department's decision also departs from prior decisions from this Court 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. *See generally Matter of Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455, 465 (2016). For example, in the medical

malpractice context, both this Court and even the First Department 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.*, 205 A.D.3d 599, 600 (1st Dep't 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 First Department's holding here that the mere 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 and are directly involved in any alleged commission of malpractice. Still, despite the presence of medical staff and the existence of *some*

medical records memorializing what took place, this Court has repeatedly instructed that petitioners cannot carry their burden on actual knowledge on those grounds alone. *See, e.g.*, *Wally G.*, 27 N.Y.3d at 677.

This Court, the Second Department, and even the First Department 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.*, 204 A.D.3d 666, 667–68 (2d Dep't 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 the First Department's decision here unaccountably excuses Jaime not only from the long-established 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.*, *Wieman-Gibson*, 206 A.D.3d at 667 (report that was not annexed to petition could not show actual notice because its contents cannot be determined); *Umeh*, 205 A.D.3d at 600 (same); *Bornschein v. City of New York*, 203 A.D.3d 570, 570 (1st Dep't 2022) (same); *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 submitted no facts based on personal knowledge or documentary 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 authority, leave is warranted on that ground as well.

C. The conflicts created by the First Department's decision are of statewide import.

This Court should grant the City leave to appeal on the further ground that the conflicts the First Department's decision created are undeniably on issues of statewide importance. The Legislature enacted GML § 50-e, in part, to ensure that municipalities have an opportunity to promptly investigate 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) (considering consolidated set of cases including both alleged intentional and unintentional torts). 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, by deepening the conflict over whether a municipality may be deemed to have acquired actual knowledge based solely on an employee's alleged participation in an intentional tort or witnessing of an unintentional one, the First Department's decision

here is unprecedented. GML § 50-e does not distinguish between intentional and unintentional torts, and in both cases an investigation conducted within 90 days is necessarily 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 timely, actual knowledge of the essential facts constituting the underlying claim. *See* GML § 50-e(5).

Further, a carve out from the shorter 90-day requirement for intentional torts, by categorically imputing actual knowledge no matter the proof submitted, forces municipalities into an impossible position. Either they must proactively investigate, within 90 days, nearly every alleged intentional episode that could conceivably result in litigation, or else forfeit the benefits the Legislature intended them to have of prompt investigation in all alleged intentional tort cases. This situation is even more troubling where, as here, there is no record proof that the incidents even occurred.

And in apparently extending this counterintuitive result to unintentional torts as well, the First Department's decision only

broadens the potential impact of *Orozco*. Local government employees will inevitably be present for all kinds of possible unintentional tort claims, yet imputing actual knowledge based solely on an employee's mere presence will effectively deny the municipality the benefit of the notice-of-claim requirement.

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," the First Department has adopted a rule that automatically imputes an employee's knowledge of a purported wrong to the municipality, regardless of whether there is any evidence that a wrong—or even an incident—in fact occurred. But that result substitutes constructive knowledge of an agent's action (alleged in only the most conclusory fashion to have even taken place) in place of the actual knowledge of the essential facts constituting a claim required by statute. In other words, it rewrites the law. This Court should resolve whether this rule is consistent with the plain language used in GML § 50-e, which requires *actual* knowledge.

Finally, because GML § 50-e applies statewide, the First Department's stark departure from established precedent 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 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 which organize their operations such that a specific municipal official, such as the New York City Comptroller, has authority to review and potentially settle pre-suit claims, *see* N.Y.C. Charter § 93(i). The Legislature's judgment to require service of a timely notice of claim upon municipalities should not be nullified in this manner.

CONCLUSION

This Court should grant leave to appeal.

Dated: New York, New York
October 12, 2022

Respectfully submitted,

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FILED: APPELLATE DIVISION - 1ST DEPT 05/19/2022 10:28 AM
NYSCEF DOC. NO. 10
RECEIVED NYSCEF: 05/19/2022

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,

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

-against-

The City of New York, Respondent-Appellant.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
---x
LUIS JAIME,

Petitioner,

- against -

CITY OF NEW YORK,

Respondent.
---x

NOTICE OF ENTRY

Index No. 806290/2021E
City File No. 2021-010226

PLEASE TAKE NOTICE that the order dated May 27, 2021 of which the within is a true copy, was entered in the Office of the Clerk of the Supreme Court of the State of New York, County of Bronx on June 2, 2021.

Dated: Bronx, New York
July 1, 2021

Yours,

GEORGIA M. PESTANA
Acting Corporation Counsel
Attorney for Defendants
260 East 161st Street, Third Floor
Bronx, New York 10451
(718) 503-5058

/s Blake Ahlberg
By: BLAKE AHLBERG
Assistant Corporation Counsel

TO:
SIM & DEPAOLA, LLP
Attorney(s) for Plaintiffs
4240 Bell Boulevard, Suite 201
Bayside, NY 11361
(718) 281-0400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 3

---X

Luis Jaime,

Index №. 806290/21

-against-

Hon. **Mitchell J. Danziger**

Justice Supreme Court

City of NY,

#001

---X

The following papers numbered 1 to ________ were read on this motion (Seq. No. 001)
for late NOC ________ noticed on ________.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 1
Answering Affidavit and Exhibits	No(s). 2
Replying Affidavit and Exhibits	No(s).

Motion is Respectfully Referred to Justice: ________
Dated: ________

Upon the foregoing papers, it is ordered that this motion is granted to the extent:

Petitioner may serve the proposed notices of claim, however must file a separate summons & complaint with purchase of an index number for each incident. Upon motion, the matters may be consolidated if the actions meet the criteria of CPLR § 602.

Dated: 5/27/21

Hon. ________
Mitchell J. Danziger, JSC

1. CHECK ONE.......... ☐ CASE DISPOSED IN ITS ENTIRETY ☑ CASE STILL ACTIVE
2. MOTION IS.......... ☑ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.......... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE ☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

Samuel C. DePaola, Esq. Fax 718-631-2700

At IAS Part 3 of the Supreme Court of the State of New York, County of BRONX, at the courthouse located at 851 Grand Concourse, Bronx, NY, on the 10 day of May, 2021

Hon. MITCHELL J. DANZIGER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
---X

LUIS JAIME,

Petitioner,

-against-

CITY OF NEW YORK,

Respondent.
---X

Index No. 806290/2021

ORDER TO SHOW CAUSE

Upon reading and filing the Petition of **SAMUEL C. DEPAOLA, Esq.**, an attorney duly licensed to practice law in the State of New York, affirmed on the 5th day of May 2021 and five (5) the Proposed Notices of Claims of **LUIS JAIME,** attached thereto, as **Exhibits A, B, C, D** and **E**, against the respondent, **CITY OF NEW YORK,** and sufficient cause having been shown therein:

LET the respondent, **CITY OF NEW YORK**, show cause before this Court, As a Virtual Conference and/or Telephone Conference in Room 707 IAS Part 3 thereof, to be held in and for the County of **BRONX**, at the Supreme Courthouse, located at 851 Grand Concourse, Bronx, New York, on the 27th day of May 2021, at 9:30 in the forenoon of that day, or as soon thereafter as counsel may be heard, why an Order should not be issued, granting Petitioner leave to serve the proposed Notices of Claims, upon the **CITY OF NEW YORK**, or for the Proposed Notices of Claims to be deemed timely served, upon the **CITY**

OF NEW YORK, *nunc pro tunc,* and for such other and further relief, as this Court may deem just and proper.

LET service of a copy of this Order, together with the papers upon which it is based, be served upon the **CITY OF NEW YORK,** by Overnight Delivery Service service, on, or before, the 17th day of May 2021.

ENTER

J.S.C.

MITCHELL J. DANZIGER

Index No. 806290/2021E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

LUIS JAIME,

Petitioner,

- against -

CITY OF NEW YORK,

Respondent.

NOTICE OF ENTRY

GEORGIA M. PESTANA
Acting Corporation Counsel of the City of New York
Attorney for Defendants
260 East 161 Street, 3rd Floor
Bronx, New York 10451

Of Counsel: Blake Ahlberg, Esq.
Tel: (718) 503-5058
City File No. 2021-010226

Due and timely service is hereby admitted.

Bronx, N.Y. .... *, 2019. . .*

.... *Esq.*

Attorney for ....