

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

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CRAIG CLEMENTI,

Index No.:

Plaintiff,

PETITION

-against-

THE CITY OF NEW YORK,

Defendant.

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DAVID L. SCHER, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1) I am a Partner at the law firm of Block O'Toole & Murphy, LLP, attorneys for the Petitioner in the above-captioned matter, and as such, I am fully familiar with the facts and circumstances of this action based upon a review of the file maintained by my office.

2) This Petition is respectfully submitted on behalf of Petitioner, CRAIG CLEMENTI, and in support of his instant application seeking an Order pursuant to General Municipal Law §50-e(5) granting Petitioner leave to serve a late Notice of Claim against the City of New York. The proposed Notice of Claim is annexed hereto as **Exhibit "A"**. In further support of this Petition, Petitioner CRAIG CLEMENTI has submitted his own Affidavit attesting to the facts and circumstances of the incident, his injuries, and his lack of knowledge of the City's potential liability within the ninety-day notice period, which is annexed hereto as **Exhibit "B"**.

3) This Petition is filed more than ninety (90) days from the occurrence, but less than the one-year and ninety (1 year and 90 days) day Statute of Limitations.

4) The underlying claim arises out of the horrific events of July 28, 2025, at approximately 6:26p.m., when CRAIG CLEMENTI, employed as Senior Director of Labor

Finance at the National Football League, was shot at close range in the lobby of the building and premises known as 345 Park Avenue, New York, New York, sustaining a gunshot wound to his side and lower back, a lumbar vertebral fracture, and permanent and debilitating physical and psychological injuries.

5) The gunman had exited his double-parked vehicle on Park Avenue and begun to walk across the outdoor plaza at 345 Park Avenue — a distance of approximately one hundred feet — while openly displaying and carrying an M4-Style/AR-15 Type Rifle. *See* various news articles at **Exhibit “C”**.

6) At the time, New York City Police Officer Didarul Islam (posthumously promoted to Detective) was providing security services to the building as an off-duty police officer working a paid security detail. ¹It was only on June 4, 2026, after negotiations with representatives of Rudin Management Company, that your affirmant was permitted to attend at the offices of Gordon Rees Scully Mansukhani LLP, counsel for Rudin Management Company, to view various security camera footage in their possession which captured the events as they unfolded.² This footage is

¹ There is a current action brought on by the estate of and family of Detective Islam currently pending before the court under Index No. 166122/2025. The filed Summons and Complaint, along with affirmations in support of the several motions pending in that action to dismiss various defendants, all set forth that Detective Islam was employed at the location as a paid NYPD detail. See Summons and Complaint at: <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=HQFSW55hbqvQLiDoFmmSA==> and affirmations at <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=RxhTmBfWDlakZqtWWSmMSw==> and <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=mOXT/jQC15vab7v3X05clg==>

² In order to view the aforementioned security camera footage, the attorneys on behalf of Rudin Management Company insisted, and your petitioner agreed, to enter into a Non-Disclosure and Confidentiality Agreement wherein your petitioner further agreed to hold, maintain, and use the "Confidential Information" (the video footage) for the sole purpose of investigating the accident. The agreement, however, also specifically contained a procedure whereby the Confidential Information could be provided to the Court provided that the Court ("the judicial process") required your petitioner to describe the relevant information more fully. The Court merely need request the relevant information or actual video footage. By virtue of the Agreement, Rudin Management retains its right to address such request and take action to preclude such disclosure if they deem same appropriate. Accordingly, your petitioner has been careful not to describe the video footage so as not to arguably violate the Agreement, but if the information or footage is required by the Court, there is an understanding between the parties as to how the Court's request can be addressed.

presumably also in the possession of Respondent's police department. If the Court deems it so, your affirmant can provide further details *in camera* as to the surveillance footage in this regard.

7) As widely reported by news outlets, when the gunman breached the entrance to 345 Park Avenue, he immediately opened fire in the lobby, fatally wounding Detective Islam and others. CRAIG CLEMENTI was struck at close range — within approximately ten feet or less of Detective Islam — and suffered a grievous gunshot wound to the side/ lower back. Despite his serious injuries, Petitioner was able to flee through the building's shattered revolving door, locate NYPD officers on East 51st Street, and call 911. Petitioner lay wounded on the sidewalk before emergency medical services transported him to New York-Presbyterian/Weill Cornell Medical Center, where he was admitted to the intensive care unit, underwent surgery for the extraction of bullet fragments, was diagnosed with a lumbar vertebral fracture, and was hospitalized for ten days.

8) It became apparent upon viewing the surveillance footage depicting Detective Islam at his security post that the City of New York, by its Police Department, may bear liability for the negligence of Detective Islam for the happening of this tragic occurrence. There was no other way for Petitioner or our Firm to possess this knowledge. If the Court deems it necessary at this juncture, your affirmant can provide additional details *in camera* as to what can be seen in the surveillance footage in this regard, including arranging for the Court to view the relevant video footage in camera. In short, the video evidence provides a good faith basis to assert that Detective Islam's inattentiveness and negligence allowed the gunman to walk across the building's plaza with a visible assault rifle and into the building; all without the gunman being detected, deterred, confronted, neutralized and without building/lobby occupants being warned of the approaching danger.

9) Upon information and belief, Detective Islam was part of Respondent's Police Department's "Paid Detail Unit." The New York City Police Department's "Paid Detail Unit" is a program which allows and authorizes New York City police officers to perform off-duty uniformed security work within New York City.

10) The program is coordinated and administered by the New York City Police Department's Paid Detail Unit, which handles all payments for the individual officers, and which charges a ten percent (10%) administrative fee payable to the City of New York. Further, the NYPD's Paid Detail Unit maintains a database of available volunteers who have been pre-screened. The Paid Detail Unit is then involved in making specific assignments. According to the New York City Police Department's brochure for this program, the assigned officers are all "active, armed, full-duty New York City Police Officer[s] and [have] been trained by the NYPD." See Exhibit C. Pursuant to Respondent's advertisement, all assigned officers will report in full uniform to the location designated by the vendor for check-in and assignment. Further, depending on the type of location covered, the NYPD will decide as to the minimum amount of coverage and amount of supervisory coverage based on safety and security considerations. Pursuant to NYPD's official brochure, the assigned police officers are subject, always, to NYPD rules, regulations, and standards of conduct.

ARGUMENT

11) Leave to file a late Notice of Claim for Petitioner's personal injuries, conscious pain and suffering, and permanent physical and psychological damages is respectfully requested. It is well-settled that a Court may, in its discretion, extend the time for a movant to serve a notice of claim pursuant to General Municipal Law §50-e(5). *Townson v. NYCHHC*, 158 A.D.3d 401, 402, 70 N.Y.S.3d 200 (1st Dept. 2018); *Matter of Felice v. Eastport/South Manor Cent. School Dist.*,

50 A.D.3d 138 (2nd Dept. 2008). As the Appellate Division, First Department has stated, "General Municipal Law § 50-e 'contains a nonexhaustive list of factors that the court should weigh, and compels consideration of all relevant facts and circumstances.'" *Id.* (quoting *Williams v. Nassau County Med. Ctr.*, 6 N.Y.3d 531, 535, 814 N.Y.S.2d 580 (2006)). Although the Court's decision to grant or deny a motion to serve a late notice of claim is purely discretionary, the determination must be based on the factors set forth in the statute and supported by record evidence. *Matter of Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455, 465, 45 N.Y.S.3d 895, 68 N.E.3d 714 (2016). Further, "while the court has discretion in determining motions to file late notices of claim, the statute is remedial in nature, and therefore should be liberally construed." *Thomas v. City of New York*, 118 A.D.3d 537, 538, 988 N.Y.S.2d 152, 153 (1st Dept. 2014) (citing *Matter of Schiffman v. City of New York*, 19 A.D.3d 206, 207, 797 N.Y.S.2d 450 (1st Dept. 2005); *Camacho v. City of New York*, 187 A.D.2d 262, 263, 589 N.Y.S.2d 421 (1st Dept. 1992)).

12) Although neither the presence nor the absence of any one factor is determinative, a court will consider the following factors: (1) whether the movant demonstrated a reasonable excuse for the failure to serve a timely notice of claim, (2) whether the municipality acquired actual notice of the essential facts of the claim within 90 days after the claim arose or a reasonable time thereafter, and (3) whether the delay would substantially prejudice the municipality in its defense. *Townson*, supra; *Jordan v. City of New York*, 41 A.D.3d 658 (2nd Dept. 2007); *Dell'Italia v. Long Island Rail Rd. Corp.*, 31 A.D.3d 758 (2nd Dept. 2006). However, the presence or absence of any one factor is not determinative, and the absence of a reasonable excuse is not fatal. *Semyonova v. New York City Hous. Auth.*, 15 A.D.3d 181, 182 (1st Dept. 2005). The provisions of General Municipal Law §50-e are not intended to operate as a device to defeat the rights of persons with legitimate claims. *Annis v. NYCTA*, 108 A.D.2d 643, 485 N.Y.S.2d 529 (1st Dept. 1985).

13) In making a determination as to whether a respondent has been prejudiced, the court may consider any evidence that is properly before it. *Barrios v. City of New York*, 300 A.D.2d 480, 481 (2nd Dept. 2002). Such an inquiry "is not limited to the four corners of the notice of claim" and "depends on the circumstances of each case." *Vallejo-Bayas v. New York City Trans. Auth.*, 103 A.D.3d 881 (2nd Dept. 2013). Respondent is not entitled to a presumption of prejudice. *Ming v. City of New York*, 54 A.D.3d 1011, 1012 (2nd Dept. 2008).

14) **Reasonable Excuse.** As stated above, it was only upon being permitted to view the surveillance footage on June 4, 2026 — nearly one year after the incident — that it became apparent that the actions and inactions of Detective Islam in the minutes preceding the shooting were negligent and implicate liability on the part of Respondent and its Police Department. That footage was not made public and remained in the exclusive possession of Rudin Management Company and police investigators. This critical information was unavailable to Petitioner's counsel until June 4, 2026, when access to the footage was obtained following negotiations with Rudin Management Company's counsel. It should further be noted that your affirment's firm was retained by Petitioner well after the 90-day notice of claim deadline had already elapsed, and as such had no ability to serve a timely Notice of Claim regardless of the circumstances.

15) **Actual Notice.** Respondent cannot argue that it did not have actual notice of the essential facts underlying the claim. Within minutes of the incident, Respondent's New York City Police Department responded to the scene and conducted a massive investigation. CRAIG CLEMENTI was interviewed by a representative of the District Attorney's office at NewYork-Presbyterian/Weill Cornell Medical Center on or about August 6, 2025, while still hospitalized. Upon information and belief, the NYPD's investigation into the shooting at 345 Park Avenue remains open. Accordingly, Respondent was apprised of the essential facts of this claim —

including Petitioner's identity, his presence at the scene, his injuries, and the circumstances of the shooting — within hours of the occurrence. NYPD likely possessed and viewed the video surveillance well within 90 days of the occurrence.

16) **No Substantial Prejudice.** The Court of Appeals has held that a "finding that a public corporation is substantially prejudiced by a late notice of claim cannot be based solely on speculation and inference; rather, a determination of substantial prejudice must be based on evidence in the record." *Matter of Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455, 465-466 (2016). The evidence here overwhelmingly demonstrates that Respondent is not substantially prejudiced by the delay. Most of the evidence as to Respondent's liability — including video footage, incident reports, witness statements, personnel files, contracts, agreements, vetting documentation, and supervision protocols and policies pertaining to the Paid Detail Unit — is within Respondent's exclusive possession and thus entirely unaffected by the delay. The evidence regarding Petitioner's injuries is likewise preserved by comprehensive medical records from New York-Presbyterian/Weill Cornell Medical Center, New York-Presbyterian Visiting Nurse Services, Ivy Rehab, and Petitioner's treating mental health providers, all of which are unaffected by the delay.

17) **Meritorious Claim.** The claim herein is meritorious as Respondent can be held vicariously liable for the actions of its Police Department's "off-duty" officers. *Llorente v. Wnorowski*, 204 A.D.3d 656 (2nd Dept. 2022) (issue of fact as to whether off-duty officer engaged in a police action at time of accident when attempting to pull over plaintiff); see also, "An employee's action may be considered to be within the scope of employment when it 'is performed while the employee is engaged generally in the business of the employer, or if the act may be reasonably said to be necessary or incidental to such employment.'" *Kelly v. Starr*, 181 A.D.3d

799, 801, 120 N.Y.S.3d 373 (2nd Dept. 2020), quoting *Scott v. Lopez*, 136 A.D.3d 885, 886, 25 N.Y.S.3d 298 (2nd Dept. 2016); *Pinto v. Tenenbaum*, 105 A.D.3d 930 (2nd Dept. 2013).

18) Further in *Gitter* the Southern District of New York held that a retail defendant (there Target) is *not* vicariously liable for a NYPD paid-detail officer's conduct because the officer's law-enforcement functions remain within the City's control (not the store's). See *Gitter v Target Corp.*, 14CV4460 DLC, 2015 WL 5710454 (SDNY Sept. 29, 2015). While the City was not a defendant in that case, the *Gitter* decision clearly supports the inference that vicarious liability shifts to the City in these instances — indeed, the Court's rationale for absolving the private host (lack of control over core police functions) is precisely the rationale that supports municipal responsibility, since the City is the one entity that retains that control. The City cannot occupy both positions at once: it cannot claim (for purposes of avoiding liability) that it lacks control over paid-detail officers' conduct, while simultaneously being the only entity that vetted, dispatched, trained, and empowered Officer Islam to act with police authority. Also if private hosts and the City were somehow both *not* liable, that would result in imposing potentially unlimited *personal* liability and financial exposure onto rank-and-file police officers for conduct performed in uniform within the scope of a Department-sanctioned assignment. This is unfair and counter to public policy interests, including that it would perversely deter participation in paid detail and undermine the program's public-safety purpose.

19) Lastly, the NYPD's "Paid Detail Unit" is acting in a purely proprietary function, not a governmental function, by loaning its officers out for private security contracts and deriving a financial benefit as a result. *Turturro v. City of New York*, 28 N.Y.3d 469 (2016). Thus, Respondent can be held vicariously liable for the negligence of its rented police officers.

20) No prior application for the relief requested herein has been made to this or to any other Court.

WHEREFORE, your Affirmant respectfully prays for an Order pursuant to General Municipal Law §50-e(5), granting Petitioner leave to serve a late Notice of Claim, together with such other and further relief as this Court may deem just and proper.

DATED: New York, New York
July 10, 2026

David Scher
David L. Scher