Alshami v State of New York
2024 NY Slip Op 35005(U)
July 19, 2024
Court of Claims
Docket Number: Claim No. 139427
Judge: Javier E. Vargas
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08/30/2024
NY COURT OF CLAIMS
ALBANY, NY

STATE OF NEW YORK COURT OF CLAIMS

MOHAMED ALSHAMI, CHRISTOPHER ANDERSON, BENJAMIN BARRIOS, KELLY BROWN, MATTHEW CAPOBIANCO, ZAIDA CIPRIAN-CASTRO, BENEDICT EVWARAYE, PAMELA GENAO, ALONZO GOLDEN, LEONARDO GONZALEZ, MAX HAMLET, LINDA HOYTE, DAVID IRIZARRY, ROMAIN JAMES, JAMAR JAMISON, ANDRE LIVERPOOL, KISHA LOFTON, ALEXANDER LOIS, ARIEL MARTINEZ, CECIL MEED, WALTER NKRUMAH, JUAN PAGAN, BONNIE RAWLS, EDWIN RODRIGUEZ, JR., MICHAEL SAPPLETON, CAMILLA ST LOUIS, CHARLENE SUAREZ, ISMAIL THOMAS, DERRICK TROTMAN, JEFFREY TUPE, RAYMOND TURNER, JAHLIEL WILLIAMS, DANIELLO WRIGHT, ROAN WYNTER, FEMI ADESINA, FRANCISCO AMADOR, CRYSTAL BROWN, JOHNNY ROJAS CHICAIZA, JAQUELINE DE LA ROSA, JESSICA GARCIA, FRANCISCO GUZMAN, MARCIA JACKSON, SHAYOLANDA LEWIS, MICHELLE MILLER, WILBERT MILLER, NADEEM MOHAMMAD, CHRISTOPHER NIEVES, TONY PACHECO, LUIS RENVILL, ERICK RUIZ, JOSE RUIZ, MICHAEL THOMPSON, ELMA VALDEZ, DAVID PETERSON, TAISH ROCHESTER, MICHAEL RUGGIERI, TIFFANY CLARK, MOHAMMED RASHID, PAULINE SAPPLETON, Individually and on Behalf of All Others Similarly Situated,

Claimants,

-v-

THE STATE OF NEW YORK and CITY UNIVERSITY OF NEW YORK,

Defendants.

DECISION AND ORDER

Claim No. 139427
Motion Nos. M-99822
M-100065

BEFORE: **HON. JAVIER E. VARGAS**
Judge of the Court of Claims

APPEARANCES: **For Claimants:**
Valli Kane & Vagnini, LLP
By: Robert Valli, Sara Wyn Kane and Matthew L. Berman, Esqs.
Mehri & Skallet, PLLC
By: Cyrus Mehri, Michael D. Lieder, Jane J. Kim, Esqs.

For Defendants:
Hon. Letitia James, Attorney General of the State of New York
By: Shawn M. Cestaro, Esq., Assistant Attorney General

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Upon the foregoing papers and for the following reasons, the Motion by Defendants State of New York (hereinafter "State") and City University of New York (hereinafter "CUNY"), to dismiss the Claim filed by Claimants Mohamed Alshami, Christopher Anderson, Benjamin Barrios, Kelly Brown, et al. (hereinafter "claimants"), and the claimants' Motion to file a sur-reply, are granted in accordance with the following decision.

By Claim filed June 30, 2023, a total of 59 claimants commenced the instant 968-paragraph Claim against Defendants State and CUNY, seeking to recover monetary damages for alleged violations of the federal Fair Labor Standards Act (hereinafter "FLSA") of 1938 (29 USC § 201 *et seq.*), for failure to appropriately compensate their CUNY campus security employees. Specifically, the Claim alleges that the State failed to legally compensate CUNY officers who

have been employed at its senior colleges for the time they spent donning and doffing their uniforms and protective equipment (*see* Claim, at 2, ¶ 2). This uncompensated donning and doffing time is alleged to be unpaid overtime work compensable under FLSA at 1.5 times the claimants' regular pay rates in weeks where claimants perform at least 40 hours a week of work (*id.*). The Claim also alleges that the State does not include three types of pay differentials such as shift, fire safety and arms in its calculation of the regular rate of pay (*see* Claim, at 3, ¶ 3). In addition, the Claim alleges that the State does not compensate CUNY campus public safety sergeants for work performed before and after their tour, and during uncompensated meal breaks, when they are supposed to be on call and are frequently interrupted by work demands (*see id.* at ¶ 4, 5).

Claimants further allege that for these violations, they should be compensated for actual and liquidated damages in amounts equal to the actual damages, and the State can avoid liquidated damages only if it shows that it acted in good faith and has reasonable grounds to believe that its act of omission was not in violation of the FLSA (*see id.* at ¶ 6). Furthermore, the Claim alleges that the State fails to pay them and other CUNY officers their overtime pay on the payday after their work is performed, but compensates them for overtime on the third payday after the work is performed in violation of the FLSA. No specific dates of accrual were alleged, however, the claimants aver that they all "worked as CUNY officers and hence as employees of the State during part or all of the period from six months before the filing of the Claim until the filing of the Claim" (Claim, at 4, ¶ 10).

As a result, the claimants seek damages totaling approximately $537,000, which are in some instances based on estimates and information generally available only through June 14th (*see* Claim at 5 ¶ 12; Exh. B). Claimants explain that such damages will be marginally

different from the $537,000 once all information is available (*see* Claim at 5, ¶ 12). Also, the damages will increase if the Court grants the motion for leave to file a late claim and they will increase unless the State immediately changes its practices as FLSA violations continue to accrue (*see id.*).

By Notice of Motion filed August 21, 2023, the State seeks a pre-answer dismissal of the Claim, pursuant to CPLR 3211(a), Court of Claims Act §§ 9, 10(4) and 11(b), as well as the Uniform Rules for the Court of Claims § 206.6, arguing, inter alia, that the Claim was received by the Attorney General's Office on July 19, 2023, and that the Claim was improperly verified. In a July 19, 2023 correspondence, sent to the claimants' counsel, the State advised that it was treating the Claim as a nullity for lack of verification (*see* Motion, Exh. B). Specifically, out of 58[1] claimants, the State argues that there appears to be seven verifications that have no county indicated[2]; one verification with a name that does not match the caption[3]; another verification with an expired notary stamp[4]; two verifications that are unsigned by the notary[5]; one verification that has an illegible name of the claimant[6]; one verification that is defective as it is notarized in

[1] The State improperly counts two claimants (Crystal Brown and Johnny Rojas Chicaiza) as one because claimants typographically fail to include a comma, separating the two names.

[2] Matthew Copobianco, Zaida Ciprian-Castro, Alonzo Golden, Edwin Rodriguez, Jr., Camilla St Louis, Christopher Nieves and Elma Valdez.

[3] Zaida Ciprian compared to Zaida Ciprian-Castro.

[4] Zaida Ciprian.

[5] Jahliel Williams and Francisco Guzman.

[6] Alonzo Golden.

the State of Florida[7]; six verifications that are generally illegible[8]; 16 verifications that have illegible notary stamps[9]; and two missing verifications for individuals captioned as claimants.[10] Furthermore, the State argues that certain verifications attached to the Claim served upon the Attorney General do not match the verifications that are attached to the Claim filed with the Court of Claims because they appear as either legible or partially legible in the filed version.[11] For those claimants where the verification is defective, the State argues that, pursuant to Court of Claims Act § 9, the Court is divested of jurisdiction.

The State argues that the Claim is also untimely because the claimants failed to comply with Court of Claims Act § 10(4),[12] wherein a claim for a breach of contract, express or implied, in the Court of Claims, shall be filed and served within six months after the accrual of the Claim. The State further argues that the claimants failed to include the actual date of accrual of their individual claims and the amount of damages claimed, both in violation of Court of Claims Act §§ 10 and 11(b), which are jurisdictional pre-requisites to maintaining an action here and cannot

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[7] David Peterson.

[8] Romain James, Cecil Meed, Charlene Suarez, Daniello Wright, Christopher Nieves and Erick Ruiz.

[9] The State inadvertently lists 17 verifications as follows:: Benedict Evwaraye, Alonzo Golden, Max Hamlet, Linda Hoyte, Romain James, Cecil Meed, Juan Pagan, Charlene Suarez, Jahliel Williams, Daniello Wright, Crystal Brown, Francisco Guzman, Michelle Miller, Nadeem Mohammad, Christopher Nieves, Tony Pacheco and Erick Ruiz.

[10] Crystal Brown, Johnny Rojas Chicaiza and Wilbert Miller.

[11] Alonzo Golden, Romain James, Daniello Wright, Crystal Brown, Nadeem Mohammad and Christopher Nieves.

[12] Pursuant to Court of Claims Act § 10(4), "a claim for breach of contract, express or implied or any other claim not otherwise provided for this section, over which jurisdiction is conferred upon the court of claims, shall be filed and served upon the attorney general within six months after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within two years after such accrual."

be amended. Specifically, the claimants failed to provide time sheets or documentation regarding their employment status or affidavits by an individual with knowledge of the facts.

Finally, the State contends that the claimants also failed to exhaust all of the administrative remedies under their Collective Bargaining Agreement (hereinafter "CBA") between the International Brotherhood of Teamsters, Local 237 and CUNY, before litigating the Claim in the Court of Claims. The claimants, as employees subject to the CBA, may not sue the employer directly for breach of that agreement, and must proceed via the union with their grievance steps in accordance with the contract. The Claim, per the State, must be dismissed for all these failures.

Thereafter, on October 6, 2023, the claimants filed an Amended Claim[13] without leave of court, as well as an Affirmation in Opposition to the State's dismissal motion arguing that the claims of the 59 claimants should not be dismissed based on allegedly defective, illegible or missing verifications because the State is exaggerating its legibility arguments and failed to afford them a reasonable chance to cure any defects. With respect to the challenged verifications, claimants attach freshly executed and legible verifications to the Affirmation (*see* Opposition, Exh. D), and argue that while the State is correct that it may nullify only the claims whose verifications it can validly challenge, its broader statements that the entire pleading is a nullity are incorrect. Per claimants, most of the allegedly defective verifications are not defective, but admit that some of the verifications submitted were more legible in the filed copy, however, the

[13] The amended claim should have been filed on or before August 28, 2023, without leave of court in accordance with the Uniform Rules of the Court of Claims § 206.7(b).

State received a copy of the filed copy. In all, the claimants concede that out of the 24 challenges, only six are valid.[14]

Moreover, claimants contend that they sufficiently alleged the time when their claims arose. They explain that their assertions that the Claim arose six months before the filing of the petition (June 30, 2023), establishes that the Claim arose on December 30, 2022. The claimants further argue that they did not have to exhaust the grievance procedure under the CBA. The causes of action put forth by claimant are not for violation of the CBA but for the violations of FLSA, which does not require an exhaustion of administrative remedies. Claimants acknowledge that while the CBA establishes the amount of member's salaries, the existence and amounts of pay differentials and meal breaks, they are not bringing claims asserting that those CBA provisions have been violated.

Finally, the claimants contend that they are not required to plead damages with absolute exactness and Court of Claims Act § 11(b) does not require that level of specificity. Claimants explain that the damages alleged here are based on estimates generally available through June 14, 2023 and clearly provide sufficient definiteness to allow the State to conduct an investigation and assess its liability. Even if the damages, as pled, are insufficient, they are sufficient under the FLSA because the State is supposed to make, keep and preserve such records of the persons employed by it and of the wages, hours and other conditions and practices of employment. As such, the claimants contend that they are filing Amended Claims along with claimants' times

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[14] Zaida Ciprian-Castro because she signed as Zaida Ciprian and because the notary stamp reflects that the notary commission expired five months before the verification was executed; Jahliel Williams and Francisco Guzman because the notary failed to sign their verifications; David Peterson because his verification was notarized by a Florida notary; Wilbert Miller for whom no verification was submitted and Cecil Meed whose verification is truly illegible.

sheets and damages to specify the exact number of weeks worked and the related damages (*see also* Opposition, Exhs. B & C).

On October 20, 2023, the State filed an Amended Reply and Affirmation in Further Support reiterating its original arguments for dismissal, but additionally notes that all the verifications attached to the Claim pre-dates the Claim filed on June 30, 2023. The State points out that claimants acknowledge that the verifications filed with the Court were clearer copies than the ones served upon the Attorney General. It explains that while Court of Claims Act § 11(a)(i) does not require the Claim served upon the Attorney General to mirror the Claim filed with the Court, it has been held that while some variation in what was served may be acceptable, if the differences are material, then dismissal is warranted.

Thereafter on October 27, 2023, claimant filed a Motion for Leave to File a Sur Reply, arguing that the State raised new arguments for dismissal in its Reply brief. Specifically, claimants contend that the State improperly argues for the first time that the verifications predate the Claim. This basis for dismissal was also not included in the Attorney General's July 19, 2023 rejection letter. Claimants argue that the function of reply papers is to address arguments in the opposition and not to permit the movant to introduce new arguments.

Following a review of these submissions, this Court agrees with the claimants with respect to the Sur-Reply, and the State with respect to the dismissal.

Court of Claims Act § 11(b) "places five specific substantive conditions upon the State's waiver of sovereign immunity by requiring the claim to specify (1) 'the nature of [the claim]'; (2) 'the time when' it arose; (3) the 'place where' it arose; (4) 'the items of damage or injuries claimed to have been sustained'; and (5) 'the total sum claimed'" (*Lepkowski v State of New*

York, 1 NY3d 201, 207 [2003]; *see Kolnacki v State of New York*, 8 NY3d 277, 280 [2007]; *R.F. v State of New York*, 2023 NY Slip Op 23260 [Ct Cl, Vargas, J. Aug. 21, 2023]). "Although 'absolute exactness' is not required, the claim must 'provide a sufficiently detailed description of the particulars of the claim to enable [the State] to investigate and promptly ascertain the existence and extent of its liability'" (*Morra v State of New York*, 107 AD3d 1115, 1116 [3d Dept 2013]; *see Sharief v State of New York*, 164 AD3d 851 [2d Dept 2018]). In addition, Section 11(b) also requires that the claim and notice of intention to file a claim shall be verified in the same manner as a complaint in an action in the Supreme Court (*see* Court of Claims Act § 11[b]; *Flowers v State of New York*, 175 AD3d 1724 [3d Dept 2019]). It is established law that the various filing and substantive requirements of the Court of Claims Act are jurisdictional in nature and therefore must be strictly construed (*see Finnerty v New York State Thruway Auth.*, 75 NY2d 721 [1989]); a failure to comply does not constitute a mere technical error, but results in a failure of subject matter jurisdiction (*see Suarez v State of New York*, 193 AD2d 1037 [3d Dept 1993]).

Applying these legal principles to the case at bar, the State has sufficiently established that the Claim must be dismissed. The record reflects that 59 claimants joined together to collectively file a Claim, alleging violations of the FLSA and seeking damages for overtime and pay differentials. This Claim falls under a category of claims that are not otherwise provided for under the Court of Claims Act, but over which the Court of Claims has jurisdiction (*see Lepkowski v State of New York*, 1 NY3d at 207; *Gorski v State of New York*, 23 Misc3d 327 [Ct Cl, DeBow, J., Dec. 23, 2008]; *Dolan v State of New York*, UID No. 2002-015-271 [Ct Cl, Collins J., July 1, 2002]). As union members, the claimants may of course exercise their rights

under the CBA and file grievances for any contractual disputes (*see Matter of Arbitration Between Monroe County and Monroe County Sheriff's Office*, 132 AD3d 1373 [4th Dept 2015]). Notably, the instant claims were brought specifically for damages resulting in alleged FLSA violations and, contrary to the State's arguments, the claimants are entitled to separately pursue any perceived violations of that Act (*see i.d.*; *Carver v State of New York*, 26 NY3d 272 [2015]).

Here, verifications were provided for all but one of the claimants listed in the caption (Wilbert Miller), who claimants admit was on long term medical leave. Unless claimants, who may be united in interest, are acquainted with the factual circumstances of the other claimants' entitlement to overtime compensation such as the weeks in which the other claimants worked in excess of 40 hours and the number of hours in excess there of -- individual verifications are required (*see Lepkowski v State of New York*, 302 AD2d 765 [3d Dept 2003], *affirmed* 1 NY3d 201; *see also Dinowitz v Rivera*, 22 Misc3d 1108[A] [Seewald, J., Supreme Court, Bronx County 2008]). Even if another party or attorney were to sign the verifications as permissible under CPLR 3020(d), pursuant to CPLR 3021, the attorney or other party must prepare a separate affidavit with a full explanation as to why he or she is signing the verification and not the claimant (*see Caldwell v State of New York*, UID No. 2021-015-061 [Ct Cl, Collins J., June 4. 2021]; *Steele v State of New York*, UID No. 2008-040-009 [Ct Cl, McCarthy J., Feb. 22, 2008]). Where, as here, multiple claimants have arguably filed claims that are united in interest, claimants must sign their own verifications, and since individual verifications are required, each must conform to the requirements of Court of Claims Act § 11(b).

A review of the attached verifications reflects that they are generally illegible with illegible notaries, missing verifications, expired notary stamps, unsigned notaries, notaries

missing the County where the document was signed – a veritable mess. Some of the verifications that were served upon the Attorney General were in even worse condition than the verifications filed with the Court. Claimants' contention that the verifications which notaries are missing the County are valid because the notary stamp includes the County where the notary is qualified, lacks merit. A notary licensed in New York State may notarize in any County in New York, therefore the person who notarizes must include the County where the notarization occurs (*see* 19 NYCRR 182). Verifications notarized outside of New York State should be accompanied by a certificate of conformity (*see* CPLR 2309; *Midfirst Bank v Agho*, 121 AD3d 343 [2d Dept 2014]; *Freedom Mortg. Corp v Toro*, 113 AD3d 815 [2d Dept 2014]).

Upon receiving the defectively verified and unverified Claim, the Attorney General's Office elected to treat the Claim as a nullity and rejected the entire Claim via letter with due diligence on the same day that the office received the Claim in accordance with CPLR 3022 (*see Flowers v State*, 175 AD3d at 1726). Court of Claims Act § 11(b) embraces CPLR 3022's remedy for lapses in verification (*see Lepkowski v State*, 1 NY3d at 210). The purpose of the CPLR 3022 requirement is to permit the rejecting party to provide notice of the verification defect with due diligence and with sufficient specificity to ensure the other party, whose pleading is rejected, has a reasonable opportunity to cure the defect (*see Ordentlich v State of New York*, UID No. 2017-029-010 [Ct Cl, Mignano, J., March 17, 2017]).

With the obvious verification deficiencies, the Court is perplexed as to why the claimants appear to have chosen instead to ignore the State's rejection letter. Regardless of claimants' contention that the State does not challenge 35 of the 59 verifications, the claimants elected to join all their claims under one Claim number. This is a unique situation, and pursuant to

CPLR 3022, the State had to reject the entire Claim. Under this particular circumstance, the State's rejection of even one claimant for lack verification was a rejection of the entire Claim. When the State rejected the Claim, treating it as a nullity, the claimants should have seized the opportunity to review all of the verifications in the rejected Claim, assess the viability of the State's determination, withdraw the defective Claim, then file and serve a newly perfected Claim. Note that in their opposition papers, the claimants belatedly attach clear and legible verifications, demonstrating their ability to file a properly verified Claim (*see* Opposition, Exh. D).

At any rate, courts have dismissed claims where a material discrepancy exists between the pleading filed and that which was served (*see Van Buskirk v State of New York,* 22 Misc 3d 953 [Ct Cl, 2008]; *Hardy v State of New York,* UID No. 2007-034-554 [Ct Cl, Hudson, J., Jan. 4, 2008]). Although filed and served claims do not have to exactly mirror each other, the paper served should conform in all important respects to the papers filed (*see Smith v State of New York,* UID No. 2009-044-521 [Ct Cl, Schaewe, J., March 16, 2009]). Usually, the court's analysis rests on whether the variations between the two pleadings are sufficiently extensive that the served pleading could not fairly be deemed a copy of the filed pleading (*see Berent v State of New York*, UID No. 2010-040-070 [Ct Cl, McCarthy, J., Dec. 13, 2010; *Smith v State of New York,* UID No. 2009-044-521 [Ct Cl, Schaewe, J., March 16, 2009]).

Here, the record reflects that the claimants acknowledge that the Claim was rejected by the Attorney General's Office for lack of verification, but argues that the differences between the two Claims are irrelevant. This Court finds that the discrepancies are material, and the claimants violated Court of Claims Act § 11 requirements (*see* Court of Claims Act §§ 11(a)(i), 11(b); *McCullough v State of New York,* UID No. 2020-032-062 [Ct Cl, Hard, J., Aug. 10, 2020]).

In any event, a review of the Claim reflects that claimants did not include an accrual date, but merely state that the claimants worked as CUNY officers for a period of six months prior to the filing the claim (*see* Claim, at 4 ¶ 10). In addition, the individualized narrative, setting forth the reasoning behind the damages sought by each claimant, omits any link to a specific payroll period, but again references the six-month period (*see* Claim at 25-142). Indeed, the claimants' opposition papers now includes a time sheet chart which should have been used to provide some precise dates (*see* Opposition, Exh. B). Surely, this should have been claimants' opportunity to provide the State with detailed information to investigate the claims. Although this action is brought to enforce relief authorized under a federal statute, the substantive pleading requirements of the Court of Claims Act must be followed *(see Lepkowski v. State*, 1 NY3d at 207). Claimants' contention that the State should assume that all 59 claims arose six months prior is in-contravention with the requirements of the Court of Claims Act, as these claims represent multiple claimants, some possibly with differing accrual dates and not qualifying for relief (*see Lepkowski v State*, 1 NY3d at 207). Any claims accruing more than six months prior to the accrual date should be barred as untimely (*see Carbone v State of New York*, UID No. 2001-015-177 [Ct Cl, Collins J., Sept. 14, 2001]).

The six-month period contained in Court of Claims Act § 10(4) is a time limitations period for which the State waives its sovereign immunity (*see Alston v State of New York*, 97 NY2d 159 [2001]; *Speers v State of New York*, 285 AD2d 872 [3d Dept 2001]). Hence, Court of Claims Act § 10(4) does not authorize the claimants to ignore Court of Claims Act § 11(b)'s "time when" requirements. Comparatively, the same reasoning can be applied to claimants who seek tort damages pursuant to Court of Claims Act § 10(3), and without specifying an accrual

date, plead that the incident in question occurred 90 days prior to the filing date. Unquestionably, the lack of an accrual date together with additional deficiencies such as improper verifications and material discrepancies between the Claim filed and Claim served are all jurisdictional defects that this Court cannot waive (*see Cardenas v State of New York*, 220 AD3d 613 [1st Dept 2023]).

In response to all these deficiencies, the claimants now purport to submit an amended claim without first seeking leave to file it with the Court of Claims. Pursuant to CPLR 3025(a), a party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it. CPLR 3025(b) provides that "[a] party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." Under the Uniform Rules of the Court of Claims, "[p]leadings may be amended in the manner provided by CPLR 3025, except that a party may amend a pleading once without leave of court within 40 days after its service" *(see* 22 NYCRR § 206.7*; Brown v State of New York*, UID No. 2018-041-051 [Ct Cl, Milano, J., July 20, 2018]).

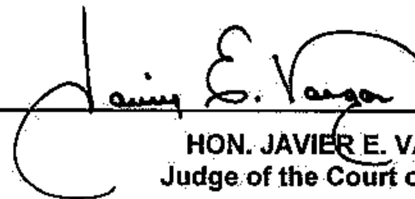
Here, the claimants filed the amended claim on October 6, 2023, which is beyond the deadline for filing the amended claim without leave which is on August 28, 2023. As such, this Court declines to consider the amended claim. Even if the claimants were to appropriately file a Notice of Motion to accompany the amended claim, a jurisdictionally defective claim cannot be cured through an amendment (*see Dinnerman v NYS Lottery*, 69 AD3d 1145 [3d Dept 2010]; *Hogan v State of New York*, 59 AD3d 754 [3d Dept 2009]). However, the Court agrees with the

claimants that the State improperly raised new arguments for dismissal in its Reply, therefore their Motion for Leave to File a Sur-Reply is granted and those arguments were not considered in this Decision and Order (*see Dannasch v Bifulco*, 184 AD2d 415 [1st Dept 1992]).

For the reasons stated above, this Court finds that the Claim must be dismissed for lack of subject matter jurisdiction (*see* Court of Claims Act §§ 10(4); 11(b) and 11(a)(i); *Clark v State*, 165 AD3d 1371 [3d Dept 2018]; *Caci v State of New York*, 107 AD3d 1121 [3d Dept 2013]; *Spaight v State* of New *York*, 91 AD3d 995 [3d Dept 2012]).

Accordingly, it is ORDERED that the claimants' Motion for Leave to File a Sur-Reply, M-100065, is granted; the State's Motion to dismiss motion, No. M-99822, is granted and Claim No. 139427 is hereby dismissed for lack of subject matter jurisdiction.

New York, New York
July 19, 2024



HON. JAVIER E. VARGAS
Judge of the Court of Claims