

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS : PART DWI

-----X Docket #  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**NOTICE OF MOTION**

MR. CLIENT,

Defendant.

-----X

PLEASE TAKE NOTICE, that upon the annexed affirmation of PATRICK MICHAEL MEGARO, ESQ., the annexed exhibits and the prior proceedings herein, the undersigned will move this Court at **Part DWI**, on \_\_\_\_\_, **2016 at 9:30 a.m.**, or as soon thereafter as counsel can be heard, for Orders:

1. Suppressing the alleged refusal of any alcohol chemical test, any other tangible or testimonial fruits of the defendant's unlawful seizure, or, in the alternative, directing the holding of a Johnson/Dunaway hearing, pursuant to CPL §§ 710.20(1) and 710.60 and VTL § 1194(2)(b) and 10 NYCRR § 59.5.
2. Suppressing any and all testimony regarding any noticed statements allegedly made by the defendant, and any other tangible or testimonial fruits of the illegal seizure and search of the defendant, or, in the alternative, directing the holding of a Huntley/Dunaway hearing, pursuant to CPL §§ 710.20(3) and 710.60;
3. Ordering the preservation of all recorded police communications, including, but not limited to: Sprint reports, 911 calls, and radio runs.
4. Precluding at trial the use of the defendant's prior criminal history or prior uncharged criminal, vicious, or immoral conduct;
5. Reserving to defendant the right to make additional motions as necessary; and
6. For such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that the Defendant demands that at any proceeding, hearing or trial in this case in which the prosecution calls witnesses to testify,

that as to each such witness they instruct him or his to bring to court, or the prosecution causes to be brought to court the following:

a) All written or otherwise recorded statements of the witness made concerning this case, including, but not limited to: memo-books, arrest forms, crime reports, and complaint follow-up forms. People v. Malinsky, 15 N.Y.2d 86 (1965); People v. Rosario, 9 N.Y.2d 286 (1961); Butts v. Justices, 37 A.D.2d 607 (2d Dep't 1971).

b) Any record, paraphrase, or summary of any statement made by the witness written by, or at the request of, the prosecution, whether or not the prosecution believes any such writing constitutes work product since that decision is to be made by the court. People v. Consolazio, 40 N.Y.2d 446 (1976), cert. den., 433 U.S. 914 (1977).

c) All physical evidence. People v. Robinson, 118 A.D.2d 516 (1st Dep't 1986).

Dated: October 20, 2016

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TO:  
ADA Michael Solomon, Esq.  
Kings County District Attorney's Office

Clerk, Criminal Court, Part DWI

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS : PART DWI

-----X Docket #  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**NOTICE OF MOTION**

MR. \ CLIENT,

Defendant.

-----X  
PATRICK MICHAEL MEGARO, ESQ., an attorney duly admitted to practice law  
before the Courts of the State of New York, affirms as follows:

1. I am the attorney of record for the Defendant in the above-referenced matter,  
and as such I am fully familiar with the facts and circumstances of this case.

2. This Affirmation is made in support of the Defendant's motions and for such  
other and further relief as this Court may deem just and proper.

3. Unless otherwise specified, all allegations of fact are based upon inspection of  
the record of this case, or upon conversations with Assistant District Attorneys, the  
Defendant, and counsel's own investigation.

4. The Defendant is charged with one count of VTL § 1192.3, Operating a Motor  
Vehicle While Intoxicated, and one count of VTL § 1192.1, Operating a Motor Vehicle  
While Impaired.

**I. MOTION TO SUPPRESS EVIDENCE OF REFUSAL**

5. The Defendant moves to suppress the refusal of any chemical tests to be  
administered to him, on the grounds that he was seized and searched in violation of his  
rights under the Fourth and Fourteenth Amendments to the United States Constitution and

Article 1, Section 12 of the New York State Constitution. see Dunaway v. New York, 442 U.S. 200 (1979); Wong Sun v. United States, 371 U.S. 471 (1963); People v. DeBour, 40 N.Y.2d 210 (1976); Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969); People v. Bigelow, 66 N.Y.2d 417 (1985); People v. Johnson, 134 Misc. 2d 474 (Crim. Ct. Queens Co. 1987). In the alternative, Defendant requests a hearing on the issues raised.

*A. The Refusal Is the Fruit of Defendant's Unlawful Seizure*

6. The Defendant denies the allegations of the complaint and asserts his innocence of the charges therein. Based upon the sworn allegations of Police Officer #1 and #2 in the Criminal Court Complaint, on \_\_\_\_\_, 2016, the Defendant was observed operating a \_\_\_\_\_ Chevrolet on the Brooklyn-Queens Expressway when it was involved in a motor vehicle accident.

7. At the time of Defendant's encounter with the police, nor at any time prior, did not violate any traffic or parking rules. No police officer witnessed him operating a motor vehicle. Defendant specifically denies operating a motor vehicle while in an intoxicated or impaired condition on that date. There was nothing about the vehicle's appearance, his appearance or his behavior or mannerisms that would have given the police officers cause to believe he was intoxicated or that his ability was impaired in any way.

8. Nevertheless, Defendant was taken into custody and transported to a police precinct. Therefore, his warrantless seizure and arrest by the police were unjustified, in that they were not based on reasonable suspicion or probable cause. The Defendant

specifically challenges the reliability and basis of knowledge of any informant who may have transmitted any contrary information regarding any alleged intoxication or impairment to the police.

9. The Defendant has standing to challenge his seizure by the police, based on the foregoing allegations and the sworn allegations in the complaint that he was operating a car when he was seized. See People v. May, 81 N.Y.2d 725 (1992); People v. Ingle, 36 N.Y.2d 413 (1975).

10. Because the defense has not been provided with police reports or other information in the exclusive possession of the District Attorney's office or its agents that would be necessary to establish the basis for his seizure and search by the police, the Defendant is not in a position to fully controvert the allegations contained in the information. Pursuant to People v. Mendoza, 82 N.Y.2d 415 (1993), Mr. Lopes should not be denied a Dunaway hearing because of his lack of access to such information. There, the Court of Appeals clearly held that "[w]hether a defendant has raised factual issues requiring a hearing [pursuant to CPL § 710.60(1)] can only be determined with reference to the People's contentions." Mendoza, 82 N.Y.2d at 427. See also Vasquez, 200 A.D.2d 344, 347 (1st Dep't 1994) (holding that the sufficiency of the defendant's allegations must be assessed with reference to his access to "such information as would enable him to set forth an optimally detailed factual predicate for suppression").

11. For the foregoing reasons, this Court should suppress the alleged refusal of a Breathalyzer/Intoxilyzer test and any alcosensor test, administered to the Defendant, and any other tangible or testimonial fruits of the illegal police conduct, **including**

**observations of his post-seizure conduct.** See Dunaway v. New York, 442 U.S. 200 (1979); Wong Sun v. United States, 371 U.S. 471 (1963); People v. Johnson, 134 Misc. 2d 474 (Crim. Ct. Queens Co. 1987). In the alternative, the Defendant requests a hearing on the issues raised.

## **II. MOTION TO SUPPRESS STATEMENTS**

12. The District Attorney's office has served notice pursuant to CPL § 710.30(1) that it will seek to introduce at trial statements allegedly made by Defendant.

3. The Defendant now moves to suppress **all properly noticed** statements that he allegedly made on the grounds that such statements were obtained in violation of his rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 6 of the New York State Constitution, and were involuntarily made within the meaning of CPL § 60.45. See People v. Huntley, 15 N.Y.2d 72 (1965); Dunaway v. New York, 442 U.S. 200 (1979); Wong Sun v. United States, 371 U.S. 471 (1963); People v. DeBour, 40 N.Y.2d 210 (1976); Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969); People v. Bigelow, 66 N.Y.2d 417 (1985). In addition, any and all tangible or testimonial fruits of his illegal seizure and search, including observations of Defendant's post-seizure conduct, should be suppressed. See People v. Rossi, 80 N.Y.2d 952 (1992). In the alternative, the Defendant requests a hearing on the issues raised.

*A. Any Statements Elicited From Defendant  
Were Involuntarily Made and In Violation of Miranda*

14. The Defendant asserts that any statements made by him were involuntary, in that they were elicited by coercion and the force of police authority. In addition, any such statements were obtained by means of police interrogation while the Defendant was in police custody, prior to a proper advisement of his constitutional rights pursuant to Miranda v. Arizona, 384 U.S. 435 (1966). The Defendant is not required to make any other specific factual allegations as to the involuntariness of these statements. see CPL §§ 710.20(3) and 710.60(3)(b).

*B. Any Statements Elicited From Defendant Were the Fruit of his Illegal Seizure*

15. The Defendant asserts that his warrantless seizure by the police was unlawful. (Johnson/Dunaway affirmations incorporated herein). Therefore, any statements elicited from the Defendant by exploitation of his illegal seizure should be suppressed as fruit of the poisonous tree. see Dunaway v. New York, 442 U.S. 200 (1979); Wong Sun v. United States, 371 U.S. 471 (1963).

16. For the reasons stated above, the Defendant requests that all properly noticed statements sought to be introduced by the prosecution at trial, as well as any other tangible or testimonial fruits of his illegal seizure, including observations of the Defendant's post-seizure conduct, be suppressed, or, in the alternative, that a hearing be ordered on the issues raised. See People v. Huntley, 15 N.Y.2d 72 (1965); Dunaway v. New York, 442 U.S. 200 (1979); People v. Rossi, 80 N.Y.2d 952 (1992).

**III. NOTICE OF DEMAND FOR PRESERVATION AND PRODUCTION  
OF ALL RADIO OR OTHER RECORDED POLICE COMMUNICATIONS**

17. The defense hereby puts the prosecution on notice that it is requesting

production of all recorded police communications related to this case, including but not limited to 911 tapes, any radio runs or Sprint records, and any communications between police officers.

18. The defense is therefore putting the prosecution on notice that they must obtain this material from the police department and prevent its destruction before it is to be produced.

19. The defense hereby puts the prosecution on notice that he is hereby challenging the reliability of any transmitted information the officers in this case may have relied upon.

#### **IV. MOTION TO PRECLUDE THE OFFERING OF EVIDENCE**

20. The Defendant has not received notice of intent to offer evidence of identification or non-noticed statement testimony at trial within 15 days of arraignment. CPL § 710.30.

21. No good cause exists why the People could no provide such notice within the time required by CPL § 710.30.

22. The Defendant therefore requests that any testimony concerning identification and any non-noticed statement be precluded. CPL § 710.30(3); People v. O'Doherty, 70 N.Y.2d 479 (1987); People v. Boughton, 70 N.Y.2d 854 (1987).

#### **V. SANDOVAL MOTION**

23. The defense moves to preclude the People from using at trial evidence of Defendant's prior criminal convictions, all underlying bad acts, and all prior uncharged



criminal, vicious, or immoral conduct. With respect to uncharged conduct, the Defendant alternatively demands that the People supply him with all specific instances of prior uncharged conduct that they will seek to offer on their direct case against the Defendant, so that a timely hearing may be held as to the admissibility of such uncharged conduct. See CPL § 240.43, People v. Sandoval, 34 N.Y.2d 371 (1974), People v. Ventimiglia, 52 N.Y.2d 350, 362. (1981).

24. The Defendant's prior arrests and bad acts should be suppressed because their use would have no purpose other than to show that he has a propensity to commit crimes, and therefore, is likely to have committed the crimes charged in the accusatory instrument. People v. Schwartzman, 24 N.Y.2d 241 (1969), People v. Shields, 58 A.D.2d 94 (1977), aff'd 46 N.Y.2d 764 (1978).

## **VI. RESERVATION OF RIGHTS**

25. The Defendant respectfully requests the right to make any and all further motions as may be necessary based upon information and disclosures which may result from the granting of requests made in this motion. People v. Frigenti, 91 Misc.2d 139 (N.Y. Co. Sup. Ct. 1977), CPL § 255.20.

26. The Defendant reserves the right to be prosecuted only pursuant to a legally sufficient misdemeanor information. The defense does not waive that right or any other rights by filing this motion. People v. Weinberg, 34 N.Y.2d 429 (1974).

WHEREFORE, your affiant respectfully requests that this Court grant the relief sought herein in its entirety and reserve to the defense the right to amend or supplement this motion, and for such other and further relief as this Court may deem just

and proper.

Dated: October 20, 2016

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PATRICK MICHAEL MEGARO

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS : PART DWI

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Docket #

-against-

**AFFIRMATION OF  
SERVICE**

MR. CLIENT,

Defendant.

-----X

PATRICK MICHAEL MEGARO, an attorney duly admitted to practice law  
before the Courts of the State of New York, hereby affirms as follows:

1. I am over the age of 18 and am not a party to this action
2. On October 20, 2016, I served a copy of the foregoing Notice of Motion,  
Affirmation in Support, Demand to Produce and Request for Bill of Particulars by  
mailing a copy using First Class mail through the United States Postal Service upon

ADA Michael Solomon, Esq.  
Kings County District Attorney's Office  
350 Jay Street  
Brooklyn, New York 11201  
VIA REGULAR MAIL AND EMAIL [solomonm@brooklynda.org](mailto:solomonm@brooklynda.org)

Dated: October 20, 2016

\_\_\_\_\_  
PATRICK MICHAEL MEGARO

Docket/Indictment #

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS : PART DWI

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MR. CLIENT,

Defendant

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NOTICE OF MOTION, AFFIRMATION

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**PATRICK MICHAEL MEGARO, ESQ.**

**Attorney for : Defendant**

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

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Service of a copy of the within: \_\_\_\_\_ is hereby admitted.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

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