SUBJECT TEST

DEPARTMENT OF PUBLIC SAFETY
BREATH ALCOHOL ANALYSIS

Date: 10/01/2021

SUBJECT NAME:
  ANTONIO VILLAMARES ARMIJO
CASE/TICKET NUMBER: 100133-PI
OBSERVATION TIME BEGAN: 20:21
SUBJECT ADVISED: Y
SUBJECT DOB: 07/21/1980 SUBJECT SEX: M
ITO INITIATED: Y
CDLE IN VEHICLE: N
ARRESTING AGENCY/DEPT:
  WESTCHESTER CO. DPS
ORI #: DPS04
ACCIDENT INVOLVED: Y
INJURIES: 0 # FATALITIES: 0
ARREST LOCATION:
  HUTCHINSON RIVER PKWY PE MILL RD
COUNTY OF ARREST: WESTCHESTER
NRIVERA LICENSE NUMBER: 197233153
STATE ISSUED: NY
ARRESTED/DETAINED FOR:
  11923
LAST DRINKING LOCATION:
  QUEENS
CORRECTING OFFICER NAME:
  KIRK BAKER
OPERATOR NAME:
  NIALL P MCGUEY
OPERATOR AGENCY/DEPT:
  WESTCHESTER CO. DPS
OPERATOR CERTIFICATE NUMBER:
  [illegible]

---BREATH ANALYSIS---

BLANK TEST	0.00	20:53
INTERNAL STANDARD	VERIFIED	20:53
[illegible]	[illegible]	[illegible]
BLANK TEST	0.00	20:54
REFERENCE STANDARD TEST	34.00e	
REFERENCE STANDARD	0.08	20:55
BLANK TEST	0.00	20:56

PO MCGUEY #4134, as employed by the NYCPD, a criminal agency, and, having been delegated by my employer to do so, certify that the above record of blood alcohol content analysis was made in the regular and ordinary course of business of this agency; that it is the regular and ordinary course of business of this agency to perform analysis of blood alcohol content and to make records of such analysis at the time they are performed; that the entries appearing on the above record were made at or near either the time of the acts, transactions, occurrences, or events stated thereon; that this record, if a copy, is a complete and exact duplicate of the original thereof; and that it is part of my employment responsibilities to maintain custody or control of this record.

10/1/2021 PO Niall McGuey #4134 NYCPD PO
Date Signature Title

Subscribed sworn, with me present:

PO Niall McGuey #4134 NYCPD 4134

EXHIBIT "6"

SUBJECT TEST

WESTCHESTER COUNTY
DEPT. OF PUBLIC SAFTEY
DATAMASTER dmt: 105806

Date: 10/01/2021

SUBJECT NAME:
GUSTAVO VILLARMARES SERRANO
CASE/TICKET NUMBER: 100173-21
OBSERVATION TIME BEGAN: 20:21
SUBJECT ADVISED: Y
SUBJECT DOB: 07/25/1980 SUBJECT SEX: M
IID INSTALLED: N
CHILD IN VEHICLE: N
ARRESTING AGENCY/DEPT:
WESTCHESTER CO. DPS
ORI #: 05900
ACCIDENT INVOLVED: Y
INJURIES: 0 # FATALITIES: 0
ARREST LOCATION:
HUTCHINSON RIVER PKWY NB MILL RD
COUNTY OF ARREST: WESTCHESTER
DRIVERS LICENSE NUMBER: 357239523
STATE ISSUED: NY
ARRESTED/DETAINED FOR:
11923
LAST DRINKING LOCATION:
QUEENS
ARRESTING OFFICER NAME:
KIRK BAKER
OPERATOR NAME:
NIALL J NERNEY
OPERATOR PERMIT NUMBER: 49049
OPERATOR AGENCY/DEPT:
WESTCHESTER CO. DPS
REFERENCE STANDARD NUMBER:
21170

---BREATH ANALYSIS---

BLANK TEST	0.00	20:53
INTERNAL STANDARD	VERIFIED	20:53
SUBJECT SAMPLE	0.16	20:53
BLANK TEST	0.00	20:54
REFERENCE STANDARD TEMP	34.00c	
REFERENCE STANDARD	0.09	20:55
BLANK TEST	0.00	20:56

I, P.O NERNEY #1139, am employed by the WCPD, a government agency, and, having been delegated by my employer to do so, certify that the above record of blood alcohol content analysis was made in the regular and ordinary course of business of this agency; that it is the regular and ordinary course of business of this agency to perform analysis of blood alcohol content and to make records of such analysis at the time they are performed; that the entries appearing on the above record were made at or soon after the time of the acts, transactions, occurrences, or events stated thereon; that this record, if a copy, is a complete and exact duplicate of the original thereof; and that it is part of my employment responsibilities to maintain custody or control of this record.

10/01/2021	P.O. #1139	P.O.
Date	Signature	Title

Operator Name, Rank and Department

P.O. Niall Nerney #1139 WCPD

Permit Number:

49049

EXHIBIT "7"

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

POLICE WITNESS IK QUESTIONS

Name: Kris Marco Date: 12/6/21
FIRST LAST

Arresting Agency: WCPD

1. Has the witness been convicted of a crime?
[✓] No [ ] Yes

If yes, DOB: _____

2. Is the witness aware of any pending criminal charge?
[✓] No [ ] Yes

If yes, where: _____

3. Is the witness aware of a finding/ruling by a Court about the truthfulness of the testimony of the witness?

[✓] No [ ] Yes
If yes, where and when: _____

4. Is the witness aware of any civil lawsuit or complaint filed concerning the conduct of the witness in this case?

[✓] No [ ] Yes
If yes, where and when: _____

5. Is the witness aware of any civil lawsuit about the conduct of the witness in a past case?

[✓] No [ ] Yes
If yes, where and when: _____

6. Is the witness aware of any administrative, personnel or civilian complaints implicating the witness's honesty and integrity?
[✓] No [ ] Yes
If yes, where and when: _____

If you become aware of any new information, please contact the ADA.

EXHIBIT "7"

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

POLICE WITNESS 1K QUESTIONS

Name: Kris Marco (FIRST / LAST) Date: 12/6/21

Arresting Agency: WCPD

1. Has the witness been convicted of a crime?
   [✓] No [ ] Yes
   If yes, DOB: _____

2. Is the witness aware of any pending criminal charge?
   [✓] No [ ] Yes
   If yes, where: _____

3. Is the witness aware of a finding/ruling by a Court about the truthfulness of the testimony of the witness?
   [✓] No [ ] Yes
   If yes, where and when: _____

4. Is the witness aware of any civil lawsuit or complaint filed concerning the conduct of the witness in this case?
   [✓] No [ ] Yes
   If yes, where and when: _____

5. Is the witness aware of any civil lawsuit about the conduct of the witness in a past case?
   [✓] No [ ] Yes
   If yes, where and when: _____

6. Is the witness aware of any administrative, personnel or civilian complaints implicating the witness's honesty and integrity?
   [✓] No [ ] Yes
   If yes, where and when: _____

If you become aware of any new information, please contact the ADA.

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

POLICE WITNESS IK QUESTIONS

Name: KIRK BAKER Date: 8/24/21
FIRST LAST

Arresting Agency: WCPD

1. Has the witness been convicted of a crime?
[✓] No [ ] Yes

If yes, DOB: _____

2. Is the witness aware of any pending criminal charge?
[ ] No [ ] Yes

If yes, where: _____

3. Is the witness aware of a finding/ruling by a Court about the truthfulness of the testimony of the witness?

[✓] No [ ] Yes

If yes, where and when: _____

4. Is the witness aware of any civil lawsuit or complaint filed concerning the conduct of the witness in this case?

[✓] No [ ] Yes

If yes, where and when: _____

5. Is the witness aware of any civil lawsuit about the conduct of the witness in a past case?

[✓] No [ ] Yes

If yes, where and when: _____

6. Is the witness aware of any administrative, personnel or civilian complaints implicating the witness's honesty and integrity?
[✓] No [ ] Yes

If yes, where and when: _____

If you become aware of any new information, please contact the ADA.

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villanueva Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@dlstawoffice.com

Discovery Package Information

DP-004268-Y01000926 transmitted on January 10, 2022 at 10:07 AM contained 3 file(s).

Category	Name	Type	Size	Note
1K	Bauer_Kirk_1_7_22.pdf	PDF	51.73 KB	
1K	Hearle_Christopher_1_7_22.pdf	PDF	171.41 KB	
1K	Marco_Kris_1_10_22.pdf	PDF	471.17 KB	

EXHIBIT "8"

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villamares Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rlslawoffice.com

Discovery Package Information

DP-0042268-Y010009726 transmitted on January 10, 2022 at 10:07 AM contained **3** files:

Category	Name	Type	Size	Note
1K	Bauer_Kirk_1_7_22.pdf	PDF	51.73 KB	
1K	Hearle_Christopher_1_7_22.pdf	PDF	171.41 KB	
1K	Marco_Kris_1_10_22.pdf	PDF	471.17 KB	

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

POLICE WITNESS 1K QUESTIONS

Name: Kris Marco _____ Date: 1/10/22
FIRST LAST

Arresting Agency: WCDPS

1. Has the witness been convicted of a crime?
   [X] No [ ] Yes
   If yes, DOB: _____

2. Is the witness aware of any pending criminal charge?
   [X] No [ ] Yes
   If yes, where: _____

3. Is the witness aware of a finding/ruling by a Court about the truthfulness of the testimony of the witness?
   [X] No [ ] Yes
   If yes, where and when: _____

4. Is the witness aware of any civil lawsuit or complaint filed concerning the conduct of the witness in this case?
   [X] No [ ] Yes
   If yes, where and when: _____

5. Is the witness aware of any civil lawsuit about the conduct of the witness in a past case?
   [X] No [ ] Yes
   If yes, where and when: _____

6. Is the witness aware of any administrative, personnel or civilian complaints implicating the witness's honesty and integrity?
   [X] No [ ] Yes
   If yes, where and when: _____

If you become aware of any new information, please contact the ADA.

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

POLICE WITNESS IK QUESTIONS

Name: KIRK (FIRST) BAKER (LAST) Date: _____

Arresting Agency: WCPD

1. Has the witness been convicted of a crime?
   [X] No [ ] Yes
   If yes, DOB: _____

2. Is the witness aware of any pending criminal charge?
   [X] No [ ] Yes
   If yes, where: _____

3. Is the witness aware of a finding/ruling by a Court about the truthfulness of the testimony of the witness?
   [X] No [ ] Yes
   If yes, where and when: _____

4. Is the witness aware of any civil lawsuit or complaint filed concerning the conduct of the witness in this case?
   [X] No [ ] Yes
   If yes, where and when: _____

5. Is the witness aware of any civil lawsuit about the conduct of the witness in a past case?
   [X] No [ ] Yes
   If yes, where and when: _____

6. Is the witness aware of any administrative, personnel or civilian complaints implicating the witness's honesty and integrity?
   [X] No [ ] Yes
   If yes, where and when: _____

If you become aware of any new information, please contact the ADA.

https://mailbox2a.westchestergov.com/owa/#viewmodel=IAttachmentViewModelPopoutFactory&AttachmentJson=%7B"__type"%3A"FileAttachment%... 1/1

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

POLICE WITNESS 1K QUESTIONS

Name: CHRISTOPHER (FIRST) HEARLE (LAST) Date: 01/07/2022

Arresting Agency: WCPD

1. Has the witness been convicted of a crime?
   [X] No [ ] Yes
   If yes, DOB: _____

2. Is the witness aware of any pending criminal charge?
   [X] No [ ] Yes
   If yes, where: _____

3. Is the witness aware of a finding/ruling by a Court about the truthfulness of the testimony of the witness?
   [X] No [ ] Yes
   If yes, where and when: _____

4. Is the witness aware of any civil lawsuit or complaint filed concerning the conduct of the witness in this case?
   [X] No [ ] Yes
   If yes, where and when: _____

5. Is the witness aware of any civil lawsuit about the conduct of the witness in a past case?
   [X] No [ ] Yes
   If yes, where and when: _____

6. Is the witness aware of any administrative, personnel or civilian complaints implicating the witness's honesty and integrity?
   [X] No [ ] Yes
   If yes, where and when: _____

If you become aware of any new information, please contact the ADA.

POLICE WITNESS 1K QUESTIONS

Name: Niall Nerney Date: 3/6/20
FIRST LAST

Arresting Agency: WCDPS

1. Has the witness been convicted of a crime?

[✓] No [ ] Yes

If yes, DOB: _____

2. Is the witness aware of any pending criminal charge?

[✓] No [ ] Yes

If yes, where: _____

3. Is the witness aware of a finding/ruling by a Court about the truthfulness of the testimony of the witness?

[✓] No [ ] Yes

If yes, where and when:

4. Is the witness aware of any civil lawsuit or complaints filed concerning the conduct of the witness in this case?

[✓] No [ ] Yes

If yes, where and when:

5. Is the witness aware of any civil lawsuit about the conduct of the witness in a past case?

[✓] No [ ] Yes

If yes, where and when:

6. Is the witness aware of any other substantiated administrative, personnel or civilian complaints implicating the witness's honesty and integrity?

[✓] No [ ] Yes

If yes, where and when

If you become aware of any new information, please contact the ADA.

EXHIBIT "9"

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and upon consultation with and agreement of the Administrative Board of the Courts, I hereby amend the uniform rules for courts exercising criminal jurisdiction (22 NYCRR Part 200) by adding sections 200.16 and 200.27 as follows, effective January 1, 2018:

* * *

200.16/200.27: Issuance of Order Confirming Disclosure and Notice Obligations

In all criminal actions on an indictment, prosecutor's information, information, or simplified information, where counsel for the defendant has provided the prosecutor with a written demand as specified under CPL 240.10(1) and 240.20, or where the prosecution has waived such demand, the court shall issue an order to prosecution and defense counsel that, inter alia, (1) confirms the prosecutor's disclosure obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), *People v Geralen*, 34 N.Y.2d 510 (1961), and their progeny; and (2) confirms defense counsel's professional obligation to provide effective assistance of counsel and meet defendant's statutory duties obligations. The order shall be issued on the first scheduled court date, following demand, where both the prosecutor and defense counsel are present. The Chief Administrator of the Courts shall promulgate a model order for this purpose that the court may use as it deems appropriate.

Chief Administrative Judge of the Courts

Dated: November 6, 2017

AO 281/17

EXHIBIT "9"

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and upon consultation with and agreement of the Administrative Board of the Courts, I hereby amend the uniform rules for courts exercising criminal jurisdiction (22 NYCRR Part 200) by adding sections 200.16 and 200.27 as follows, effective January 1, 2018:

* * *

200.16/200.27: Issuance of Order Confirming Disclosure and Notice Obligations

In all criminal actions on an indictment, prosecutor's information, information, or simplified information, where counsel for the defendant has provided the prosecutor with a written demand as specified under CPL 240.10(1) and 240.20, or where the prosecution has waived such demand, the court shall issue an order to prosecution and defense counsel that, inter alia, (1) confirms the prosecutor's disclosure obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), *People v Geaslen*, 54 N.Y.2d 510 (1981), and their progeny; and (2) confirms defense counsel's professional obligation to provide effective assistance of counsel and meet defendant's statutory notice obligations. The order shall be issued on the first scheduled court date, following demand, where both the prosecutor and defense counsel are present. The Chief Administrator of the Courts shall promulgate a model order for this purpose that the court may use as it deems appropriate.

Chief Administrative Judge of the Courts

Dated: November 6, 2017

AO 291/17

STATE OF NEW YORK, _____ COURT
COUNTY OF _____: CRIMINAL TERM. PART __
----------x
PEOPLE OF THE STATE OF NEW YORK,

-against-

_____, Defendant.

Case No. _____

Order to Counsel in Criminal Cases

----------x

_____, J.

The court, pursuant to an Administrative Order of the Chief Administrative Judge and at the recommendation of the New York State Justice Task Force and in furtherance of the fair administration of justice, issues this order as both a reminder and a directive that counsel uphold their constitutional, statutory and ethical responsibilities in the above-captioned proceedings.

To the Prosecutor:

The District Attorney and the Assistant responsible for the case, or, if the matter is not being prosecuted by the District Attorney, the prosecuting agency and its assigned representative, is directed to make timely disclosures of information favorable to the defense as required by *Brady v Maryland*, 373 US 83 (1963), *Giglio v United States*, 405 US 150 (1972), *People v Geaslen*, 54 NY2d 510 (1981), and their progeny under the United States and New York State constitutions, and by Rule 3.8(b) of the New York State Rules of Professional Conduct, as described hereafter.

• The District Attorney and the Assistant responsible for the case have a duty to learn of such favorable information that is known to others acting on the government's behalf in the case, including the police, and should therefore confer with investigative and prosecutorial personnel who acted in this case and review their and their agencies' files directly related to the prosecution or investigation of this case.

• Favorable information could include, but is not limited to:

a) Information that impeaches the credibility of a testifying prosecution witness, including (i) benefits, promises, or inducements, express or tacit, made to a witness by a law enforcement official or law enforcement victim services agency in connection with giving testimony or cooperating in the case; (ii) a witness's prior inconsistent statements, written or oral; (iii) a witness's prior convictions and uncharged criminal conduct; (iv) information that tends to show that a witness has a motive to lie to inculpate the defendant, or a bias against the defendant or in favor of the complainant or the prosecution; and (v) information that tends to show impairment of a witness's ability to perceive, recall, or recount relevant events, including impairment resulting from mental or physical illness or substance abuse.

b) Information that tends to exculpate, reduce the degree of an offense, or support a potential defense to a charged offense.

c) Information that tends to mitigate the degree of the defendant's culpability as to a charged offense, or to mitigate punishment.

d) Information that tends to undermine evidence of the defendant's identity as a perpetrator of a charged crime, such as a non-identification of the defendant by a witness to a charged crime or an identification or other evidence implicating another person in a manner that tends to cast doubt on the defendant's guilt.

e) Information that could affect in the defendant's favor the ultimate decision on a suppression motion.

• Favorable information shall be disclosed whether or not it is recorded in tangible form, and irrespective of whether the prosecutor credits the information.

• Favorable information must be timely disclosed in accordance with the United States and New York State constitutional standards, as well as CPL article 240. Disclosures are presumptively "timely" if they are completed no later than 30 days before commencement of trial in a felony case and 15 days before commencement of trial in a misdemeanor case. Records of a judgment of conviction or a pending criminal action ordinarily are discoverable within the time frame provided in CPL 240.44 or 240.45(1). Disclosures that pertain to a suppression hearing are presumptively "timely" if they are made no later than 15 days before the scheduled hearing date. The prosecutor is reminded that the obligation to disclose is a continuing one. Prosecutors should strive to determine if favorable information exists. Nothing herein shall be understood to diminish a prosecutor's obligation to disclose exculpatory information as soon as reasonably possible.

• A protective order may be issued for good cause, and CPL 240.50 shall be deemed to apply, with respect to disclosures required under this order. The prosecutor may request a ruling from the court on the need for disclosure.

• Only willful and deliberate conduct will constitute a violation of this order or be eligible to result in personal sanctions against a prosecutor.

To Defense Counsel:

Defense counsel, having filed a notice of appearance in the above captioned case, is obligated under both the New York State and the United States Constitution to provide effective representation of defendant. Although the following list is not meant to be exhaustive, counsel shall remain cognizant of the obligation to:

a) Confer with the client about the case and keep the client informed about all significant developments in the case;

b) Timely communicate to the client any and all guilty plea offers, and provide reasonable advice about the advantages and disadvantages of such guilty plea offers and about the potential sentencing ranges that would apply in the case;

c) When applicable based upon the client's immigration status, ensure that the client receives competent advice regarding the immigration consequences in the case as required under *Padilla v Kentucky*. 559 US 356 (2010);

d) Perform a reasonable investigation of both the facts and the law pertinent to the case (including as applicable, e.g., visiting the scene, interviewing witnesses, subpoenaing pertinent materials, consulting experts, inspecting exhibits, reviewing all discovery materials obtained from the prosecution, researching legal issues, etc.), or, if appropriate, make a reasonable professional judgment not to investigate a particular matter;

e) Comply with the requirements of the New York State Rules of Professional Conduct regarding conflicts of interest, and when appropriate, timely notify the court of a possible conflict so that an inquiry may be undertaken or a ruling made;

f) Possess or acquire a reasonable knowledge and familiarity with criminal procedural and evidentiary law to ensure constitutionally effective representation in the case; and

g) When the statutory requirements necessary to trigger notice from the defense are met (e.g., a demand, intent to introduce the evidence, etc.), comply with the statutory notice obligations for the defense as specified in CPL 250.10, 250.20, and 250.30.

So ordered.

_____

Judge or Justice

Dated:

EXHIBIT "10"

Query Reports Utilities Help Log Out

CLOSED

U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:95-cv-03622-SJ

Naham v. United States, et al
Assigned to: Judge Sterling Johnson, Jr
Demand: $1,000,000
Cause: 28:1346 Tort Claim

Date Filed: 09/05/1995
Date Terminated: 09/22/2000
Jury Demand: Plaintiff
Nature of Suit: 350 Motor Vehicle
Jurisdiction: U.S. Government Defendant

Plaintiff

Jeffrey Naham

represented by **Richard A. Engelberg**
Kreines and Engelberg
330 Old Country Road

Mineola, NY 11501
516-877-1717
Fax: 516-877-1748
Email: frengel@optonline.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

United States of America

represented by **Michael J. Goldberger**
United States Attorneys Office
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201-1820
(718)254-6052
Fax: (718)254-6083
Email: Michael.Goldberger@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Kirk A. Baker

Defendant

August L. Santolupo
TERMINATED: 11/03/1998

represented by **Christopher Allan Jeffreys**
Suffolk County Attorney
100 Veterans Memorial Highway
Hauppauge, NY 11788
631-853-4049
Fax: 631-853-5833
Email: christopher.jeffreys@suffolkcountyny.gov
TERMINATED: 11/03/1998
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Mary H. Price
TERMINATED: 11/03/1998

represented by **Christopher Allan Jeffreys**
(See above for address)
TERMINATED: 11/03/1998

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

NIALL NERNEY and MAUREEN NERNEY,

Plaintiff(s),

-against-

LEGACY YARDS TENANT LLC and HUDSON YARDS CONSTRUCTION LLC,

Defendant(s).

SUMMONS

Index No.:
Date Purchased:

Plaintiff designates NEW YORK County as the place of trial

Basis of Venue: Defendant's principal place of business

To the above named Defendant(s):

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
July 13, 2016

SACKS AND SACKS, LLP

By: **ANDREW R. DIAMOND, ESQ.**
Attorney(s) for Plaintiffs
Office and Post Office Address
150 Broadway – 4th Floor
New York, New York 10038
(212) 964-5570

Defendant(s) Address(es):

LEGACY YARDS TENANT LLC
c/o Corporation Service Company
80 State Street
Albany, New York 12207

HUDSON YARDS CONSTRUCTION LLC
c/o Corporation Service Company
80 State Street
Albany, New York 12207

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

----------x

NIALL NERNEY and MAUREEN NERNEY,

Plaintiff(s),

-against-

LEGACY YARDS TENANT LLC and HUDSON YARDS CONSTRUCTION LLC,

Defendant(s).

----------x

VERIFIED COMPLAINT

Index No.:

Plaintiffs, complaining of the defendants, by their attorneys, **SACKS & SACKS, LLP**, respectfully allege as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF, NIALL NERNEY

FIRST: That at all times herein mentioned, defendant, **LEGACY YARDS TENANT LLC** was and still is a foreign limited liability company duly authorized to own property and conduct business in the State of New York.

SECOND: That at all times herein mentioned, defendant, **HUDSON YARDS CONSTRUCTION LLC** was and still is a foreign limited liability company duly authorized to own property and conduct business in the State of New York.

THIRD: That at all times herein mentioned, defendant, **LEGACY YARDS TENANT LLC** was and still is the owner of premises under construction located at 501 West 34th Street a/k/a 10 Hudson Yards, in the Borough of Manhattan, City and State of New York.

FOURTH: That at all times herein mentioned, defendant, **HUDSON YARDS CONSTRUCTION LLC** was and still is the owner of the aforesaid premises.

FIFTH: That at all times herein mentioned, defendant, **HUDSON YARDS CONSTRUCTION**

LLC was in the business of providing general contracting services and was the general contractor at the aforesaid premises.

SIXTH:That at all times herein mentioned, defendant, HUDSON YARDS CONSTRUCTION LLC was in the business of providing construction management services and was the construction manager at the aforesaid premises.

SEVENTH: That at all times herein mentioned, defendant, LEGACY YARDS TENANT LLC entered into a contract with HUDSON YARDS CONSTRUCTION LLC for HUDSON YARDS CONSTRUCTION LLC to act as general contractor and/or construction manager at the aforesaid premises.

EIGHTH: That at all times herein mentioned, defendant, LEGACY YARDS TENANT LLC entered into a contract with Tutor Perini for Tutor Perini to act as general contractor and/or construction manager at the aforesaid premises.

NINTH: That at all times herein mentioned, defendant, HUDSON YARDS CONSTRUCTION LLC entered into a contract with Tutor Perini for Tutor Perini to act as

TENTH: That on the 17th day of February, 2015, while plaintiff, NIALL NERNEY was lawfully upon the aforesaid premises as an employee of the aforesaid Tutor Perini he was caused to sustain serious and severe injuries.

ELEVENTH: The occurrence as aforesaid was caused solely and wholly by reasons of the negligence, carelessness and recklessness of the defendants, their contractors, agents and employees who were negligent in the ownership, operation, management and control of the aforementioned premises. While plaintiff was lawfully performing his duties, he was caused to slip on ice and debris causing him to sustain serious and severe injuries. The defendants, their contractors, agents and employees failed to ensure that work area, thoroughfares and passageways were free from slipping

hazards; further, allowed ice to accumulate in a reckless, dangerous manner, causing plaintiff to slip, sustaining serious and severe injuries; further, failed to ensure that loads were properly bundled and hoisted, constructed, placed, operated and maintained so as not to collapse upon the plaintiff; further, failed to ensure that loads were properly balanced and secured before set in motion; further, failed to ensure that there would be no sudden acceleration and/or deceleration of a load which ultimately fell onto the plaintiff; further, failed to ensure proper hoisting equipment was provided and utilized; further, failed to keep the area where the workers had to work safe and clear of slipping hazards; further, violated Sections 200, 240 and 241(6) of the Labor Law of the State of New York, Rule 23 of the Industrial Code of the State of New York, specifically but not limited to 23-1.5, 23-1.7, 23-2.1, 23-2.2, 23-2.3, 23-4, 23-5, 23-6, 23-7, 23-8, Article 1926 of O.S.H.A and was otherwise negligent, careless and reckless causing plaintiff to sustain serious and severe injuries.

TWELFTH: Plaintiff was free from comparative fault.

THIRTEENTH: As a result of the aforesaid occurrence plaintiff was rendered sick, sore, lame and disabled, was confined to bed and home for a long period of time; was caused to expend large sums of money for medical aid and attention and has been prevented from attending his usual occupation and/or avocation for a long period of time.

FOURTEENTH: The monetary damages sustained by plaintiff exceed the jurisdictional limitations of all lower courts which would otherwise have had jurisdiction.

WHEREFORE, the plaintiff demands relief against the defendants for conscious pain and suffering, loss of enjoyment of life, medical expenses, past and future, lost wages and union benefits, past and future, and all other recoverable items under New York State law.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF, MAUREEN NERNEY

FIFTEENTH: Plaintiff, **MAUREEN NERNEY**, repeats, reiterates and realleges each and every allegation contained in Paragraphs "**FIRST**" through "**FOURTEENTH**" with the same force and effect as if herein fully set forth at length.

SIXTEENTH: That at all times hereinafter mentioned, plaintiff, **MAUREEN NERNEY**, is the wife of plaintiff, **NIALL NERNEY**, and resides with him.

SEVENTEENTH: By reason of the occurrence as aforesaid and the injuries sustained by the plaintiff, **NIALL NERNEY**, the plaintiff, **MAUREEN NERNEY**, lost the support, services, love, companionship, affection, society, sexual relations, solace of her husband, the plaintiff, **NIALL NERNEY**, and her happiness in his society has been impaired.

EIGHTEENTH: The amount of damages sought by plaintiff, **MAUREEN NERNEY** exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff, **MAUREEN NERNEY**, demands relief against the defendants herein.

SACKS AND SACKS, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address:
150 Broadway - 4th Floor
New York, New York 10038
(212) 964-5570

ATTORNEY'S VERIFICATION BY AFFIRMATION

I, **ANDREW R. DIAMOND**, am an attorney duly admitted to practice in the courts of New York State, and say that: I am the attorney of record, or of counsel with the attorney(s) of record, for the plaintiff(s), I have read the annexed **SUMMONS AND COMPLAINT** know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following: facts, investigations and pertinent data contained in deponent's file.

The reason I make this affirmation instead of plaintiff is because plaintiff(s) reside in a County other than where deponent maintains his office.

Dated: New York, New York
July 13, 2016

ANDREW R. DIAMOND, ESQ.

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

----------x

NIALL NERNEY and MAUREEN NERNEY,

Plaintiff(s),

-against-

Index No.:

LEGACY YARDS TENANT LLC and HUDSON YARDS CONSTRUCTION LLC,

Defendant(s).

----------x

SUMMONS AND COMPLAINT

Sacks and Sacks, LLP
150 Broadway, 4th Floor
New York, New York 10038
T: (212) 964-5570
F: (212) 349-2141

RECEIVED NYSCEF: 09/10/2

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

NIALL NERNEY and MAUREEN NERNEY,

Plaintiff(s),

-against-

LEGACY YARDS TENANT LLC, 509 W 34, L.L.C., RELATED PROPERTIES CORPORATION, OXFORD PROPERTIES, LLC and HUDSON YARDS CONSTRUCTION LLC,

Defendant(s).

SUMMONS

Index No.:
Date Purchased:

Plaintiff designates NEW YORK County as the place of trial

Basis of Venue: Defendant's principal place of business

To the above named Defendant(s):

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
September 10, 2015

SACKS AND SACKS, LLP

By: KENNETH SACKS, ESQ.
Attorney(s) for Plaintiffs
Office and Post Office Address
150 Broadway – 4th Floor
New York, New York 10038
(212) 964-5570

Defendant(s) Address(es):

LEGACY YARDS TENANT LLC
c/o Corporation Service Company
80 State Street, Albany, New York 12207

HUDSON YARDS CONSTRUCTION LLC
c/o Corporation Service Company
80 State Street, Albany, New York 12207

509 W 34, L.L.C.
c/o National Registered Agents, Inc.
111 Eighth Ave, 13th Fl, New York, NY 10011

RELATED PROPERTIES CORPORATION
c/o Corporation Service Company
80 State Street
Albany, New York 12207

OXFORD PROPERTIES, LLC
c/o Mark Weissman
45 Broadway, 12th Floor
New York, New York, 10006

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

----------x

NIALL NERNEY and MAUREEN NERNEY,

Plaintiff(s),

VERIFIED COMPLAINT

-against-

LEGACY YARDS TENANT LLC, 509 W 34, L.L.C., RELATED PROPERTIES CORPORATION, OXFORD PROPERTIES, LLC and HUDSON YARDS CONSTRUCTION LLC,

Index No.:

Defendant(s).

----------x

Plaintiffs, complaining of the defendants, by their attorneys, **SACKS & SACKS, LLP**, respectfully allege as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF, NIALL NERNEY

FIRST: That at all times herein mentioned, defendant, **LEGACY YARDS TENANT LLC** was and still is a foreign limited liability company duly authorized to own property and conduct business in the State of New York.

SECOND: That at all times herein mentioned, defendant, **509 W 34, L.L.C.** was and still is a foreign limited liability company duly authorized to own property and conduct business in the State of New York.

THIRD: That at all times herein mentioned, defendant, **RELATED PROPERTIES CORPORATION** was and still is a foreign corporation duly authorized to own property and conduct business in the State of New York.

FOURTH: That at all times herein mentioned, defendant, **OXFORD PROPERTIES, LLC** was and still is a foreign limited liability company duly authorized to own property and conduct business in the State of New York.

FIFTH: That at all times herein mentioned, defendant, **HUDSON YARDS CONSTRUCTION LLC** was and still is a foreign limited liability company duly authorized to own property and conduct business in the State of New York.

SIXTH: That at all times herein mentioned, defendant, **LEGACY YARDS TENANT LLC** was and still is the owner of premises under construction located at 501 West 34th Street a/k/a 10 Hudson Yards, in the Borough of Manhattan, City and State of New York.

SEVENTH: That at all times herein mentioned, defendant, **509 W 34, L.L.C.** was and still is the owner of the aforesaid premises.

EIGHTH: That at all times herein mentioned, defendant, **RELATED PROPERTIES CORPORATION** was and still is the owner of the aforesaid premises.

NINTH: That at all times herein mentioned, defendant, **OXFORD PROPERTIES, LLC** was and still is the owner of the aforesaid premises.

TENTH: That at all times herein mentioned, defendant, **HUDSON YARDS CONSTRUCTION LLC** was and still is the owner of the aforesaid premises.

ELEVENTH: That at all times herein mentioned, defendant, **HUDSON YARDS CONSTRUCTION LLC** was in the business of providing general contracting services and was the general contractor at the aforesaid premises.

TWELFTH: That at all times herein mentioned, defendant, **HUDSON YARDS CONSTRUCTION LLC** was in the business of providing construction management services and was the construction manager at the aforesaid premises.

THIRTEENTH: That at all times herein mentioned, defendant, **LEGACY YARDS TENANT LLC** entered into a contract with **HUDSON YARDS CONSTRUCTION LLC** for **HUDSON YARDS CONSTRUCTION LLC** to act as general contractor and/or construction manager at the aforesaid premises.

FOURTEENTH: That at all times herein mentioned, defendant, **509 W 34, L.L.C.** entered into a contract with **HUDSON YARDS CONSTRUCTION LLC** for **HUDSON YARDS**

CONSTRUCTION LLC to act as general contractor and/or construction manager at the aforesaid premises.

FIFTEENTH: That at all times herein mentioned, defendant, **RELATED PROPERTIES CORPORATION** entered into a contract with **HUDSON YARDS CONSTRUCTION LLC** for **HUDSON YARDS CONSTRUCTION LLC** to act as general contractor and/or construction manager at the aforesaid premises.

SIXTEENTH: That at all times herein mentioned, defendant, **OXFORD PROPERTIES, LLC** entered into a contract with **HUDSON YARDS CONSTRUCTION LLC** for **HUDSON YARDS CONSTRUCTION LLC** to act as general contractor and/or construction manager at the aforesaid premises.

SEVENTEENTH: That at all times herein mentioned, defendant, **LEGACY YARDS TENANT LLC** entered into a contract with Tutor Perini for Tutor Perini to act as general contractor and/or construction manager at the aforesaid premises.

EIGHTEENTH: That at all times herein mentioned, defendant, **509 W 34, L.L.C.** entered into a contract with Tutor Perini for Tutor Perini to act as general contractor and/or construction manager at the aforesaid premises.

NINTEENTH: That at all times herein mentioned, defendant, **RELATED PROPERTIES CORPORATION** entered into a contract with Tutor Perini for Tutor Perini to act as general contractor and/or construction manager at the aforesaid premises.

TWENTIETH: That at all times herein mentioned, defendant, **OXFORD PROPERTIES, LLC** entered into a contract with Tutor Perini for Tutor Perini to act as general contractor and/or construction manager at the aforesaid premises.

TWENTY-FIRST: That on the 28th day of July, 2015, while plaintiff, **NIALL NERNEY** was lawfully upon the aforesaid premises as an employee of the aforesaid Tutor Perini he was caused to sustain serious and severe injuries.

TWENTY-SECOND: The occurrence as aforesaid was caused solely and wholly by reason of the negligence, carelessness and recklessness of the defendants, their contractors, agents and employees who were negligent in the ownership, operation, management and control of the aforesaid premises. While plaintiff was lawfully performing his duties, he was caused to trip on dirt, debris and other refuse, causing him to sustain serious and severe injuries. Defendants, their contractors, agents and employees failed to ensure that work areas, thoroughfares and passageways were free of tripping and slipping hazards; further, allowed debris to accumulate in a reckless, dangerous manner, causing plaintiff to trip, sustaining serious and severe injuries; further, failed to ensure that loads were properly hoisted, constructed, placed, operated and maintained; further, failed to ensure that loads were properly balanced and secured before set in motion; further, failed to ensure that there would be no sudden acceleration and/or deceleration of a moving load; further, failed to ensure proper hoisting apparatus was utilized; further, failed to man the jobsite sufficient with laborers to keep up with the cleanup of dirt, debris and other refuse; further, violated Sections 200, 240 and 241(6) of the Labor Law of the State of New York, Rule 23 of the Industrial Code of the State of New York, specifically but not limited to 23-1.5, 23-1.7, 23-2.1, 23-2.2, 23-2.3, 23-4, 23-5, 23-6, 23-7, 23-8, Article 1926 of O.S.H.A and was otherwise negligent, careless and reckless causing plaintiff to sustain serious and severe injuries.

TWENTY-THIRD: Plaintiff was free from comparative fault.

TWENTY-FOURTH: As a result of the aforesaid occurrence plaintiff was rendered sick, sore, lame and disabled, was confined to bed and home for a long period of time; was caused to expend large sums of money for medical aid and attention and has been prevented from attending his usual occupation and/or avocation for a long period of time.

TWENTY-FIFTH: The monetary damages sustained by plaintiff exceed the jurisdictional limitations of all lower courts which would otherwise have had jurisdiction.

WHEREFORE, the plaintiff demands relief against the defendants for conscious pain and suffering, loss of enjoyment of life, medical expenses, past and future, lost wages and union benefits, past and future, and all other recoverable items under New York State law.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF, MAUREEN NERNEY

TWENTY-SIXTH: Plaintiff, **MAUREEN NERNEY**, repeats, reiterates and realleges each and every allegation contained in Paragraphs **"FIRST"** through **"TWENTY-FIFTH"** with the same force and effect as if herein fully set forth at length.

TWENTY-SEVENTH: That at all times hereinafter mentioned, plaintiff, **MAUREEN NERNEY**, is the wife of plaintiff, **NIALL NERNEY**, and resides with him.

TWENTY-EIGHTH: By reason of the occurrence as aforesaid and the injuries sustained by the plaintiff, **NIALL NERNEY**, the plaintiff, **MAUREEN NERNEY**, lost the support, services, love, companionship, affection, society, sexual relations, solace of her husband, the plaintiff, **NIALL NERNEY**, and her happiness in his society has been impaired.

TWENTY-NINTH: The amount of damages sought by plaintiff, **MAUREEN NERNEY** exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff, **MAUREEN NERNEY**, demands relief against the defendants herein.

SACKS AND SACKS, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address:
150 Broadway - 4th Floor
New York, New York 10038
(212) 964-5570

ATTORNEY'S VERIFICATION BY AFFIRMATION

I, **KENNETH SACKS**, am an attorney duly admitted to practice in the courts of New York State, and say that: I am the attorney of record, or of counsel with the attorney(s) of record, for the plaintiff(s), I have read the annexed **SUMMONS AND VERIFIED COMPLAINT** know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following: facts, investigations and pertinent data contained in deponent's file.

The reason I make this affirmation instead of plaintiff is because plaintiff(s) reside in a County other than where deponent maintains his office.

Dated: New York, New York
September 10, 2015

KENNETH SACKS, ESQ.

EXHIBIT "11"

CIVILIAN WITNESS QUESTIONS

Name: Dylan Dewyscockie Date: 12/20/21
FIRST LAST

Agency (if applicable) _____ DOB: _____

1. Have you been convicted of a crime or offense?
[X] No [ ] Yes

2. Are you aware of any pending criminal charge?
[X] No [ ] Yes
If yes, where: _____

3. Are you aware of a finding/ruling by a Court about the truthfulness of your testimony?
[X] No [ ] Yes
If yes, where: _____

4. Have any benefits or promises been made to you in connection with your testimony in this case?
[X] No [ ] Yes

5. Do you have any connection to this defendant?
[X] No [ ] Yes

6. Do you have any connection to this complainant?
[ ] No [X] Yes self

7. Do you have any mental/physical illness or substance abuse problems that would affect your ability to perceive, recall or testify about this incident?

[X] No [ ] Yes

If you become aware of any new information, please contact the ADA.

Doc No 1036710
Updated 2/4/20

EXHIBIT "11"

CIVILIAN WITNESS QUESTIONS

Name: Dylan Dewysockie
FIRST LAST

Date: 12/20/21

Agency (if applicable) _____

DOB: _____

1. Have you been convicted of a crime or offense?
   [X] No [ ] Yes

2. Are you aware of any pending criminal charge?
   [X] No [ ] Yes
   If yes, where: _____

3. Are you aware of a finding/ruling by a Court about the truthfulness of your testimony?
   [X] No [ ] Yes
   If yes, where: _____

4. Have any benefits or promises been made to you in connection with your testimony in this case?
   [X] No [ ] Yes

5. Do you have any connection to this defendant?
   [X] No [ ] Yes

6. Do you have any connection to this complainant?
   [ ] No [X] Yes self

7. Do you have any mental/physical illness or substance abuse problems that would affect your ability to perceive, recall or testify about this incident?

   [X] No [ ] Yes

If you become aware of any new information, please contact the ADA.

EXHIBIT "12"

Technical & Administrative Review Checklist - Simulator Solution	
Class: Form ID: Step6 Form 4b (Version 6)	Effective Date: December 14, 2015 Page: 1 of 1

Solution Lot Number: 18360

Review Start Date: 12/13/18

Reviewer (initials): CAB

Documentation:

- ✓ Handwritten initials on all pages
- ✓ Page number on all pages, total pages noted
- ✓ Solution lot number on all solution pages; bottle number on all analytical pages
- ✓ Proper sample loading documented
- ✓ All pages of the technical record were reviewed for corrections; if applicable, corrections were documented appropriately
- ✓ Dates of analyses documented
- ✓ If abbreviations/symbols specific to the laboratory are used, they have been defined in section procedures
- N/A Any deviations from acceptability criteria have documented approval

Quality Control Data:

- ✓ Correct version of the test method is indicated on the QC Worksheet
- ✓ Required control samples analyzed, expiration dates not exceeded
- ✓ Acceptance criteria met
- ✓ QC results are accurately entered in Tox Form 11 QC Spreadsheet

Technical Data:

- ✓ The technical records demonstrate compliance with test methods
- ✓ Data transfers are accurate
- ✓ Retention times are recorded and acceptable
- ✓ Results meet acceptability criteria

Simulator Solution Record (electronic):

- ✓ Solution specific information is accurate (e.g. lot number, expiration date, etc)
- ✓ Results are accurately reported
- ✓ Electronic signature applied
- ✓ File name accurate

Review Completed:

- ✓ Upon review of the technical records available, I independently reached the same conclusion(s) reported.

Reviewer (initial/date): CAB 12/13/18

EXHIBIT "12"

New York State Police Crime Laboratory System

Technical & Administrative Review Checklist - Simulator Solution

Class:	Form	Effective Date:	December 11, 2018
ID:	Breath Form 4b (Version 6)	Page:	1 of 1

Solution Lot Number: 18360

Review Start Date: 12/13/18

Reviewer (initials): CA

Documentation:

✓ Handwritten initials on all pages

✓ Page number on all pages, total pages noted

✓ Solution lot number on all solution pages; bottle number on all analytical pages

✓ Proper sample loading documented

✓ All pages of the technical record were reviewed for corrections; if applicable, corrections were documented appropriately

✓ Dates of analyses documented

✓ If abbreviations/symbols specific to the laboratory are used, they have been defined in section procedures

NA Any deviations from acceptability criteria have documented approval

Quality Control Data:

✓ Correct version of the test method is indicated on the QC Worksheet

✓ Required control samples analyzed, expiration dates not exceeded

✓ Acceptance criteria met

✓ QC results are accurately entered in Tox Form 11 QC Spreadsheet

Technical Data:

✓ The technical records demonstrate compliance with test methods

✓ Data transfers are accurate

✓ Retention times are recorded and acceptable

✓ Results meet acceptability criteria

Simulator Solution Record (electronic):

✓ Solution specific information is accurate (e.g. lot number, expiration date, etc)

✓ Results are accurately reported

✓ Electronic signature applied

✓ File name accurate

Review Completed:

✓ Upon review of the technical records available, I independently reached the same conclusion(s) reported.

Reviewer (initial/date): CA 12/13/18

Approved By:	Associate Director of Forensic Science/Toxicology	Print Date:	12/13/2018

New York State Police Crime Laboratory System
BREATH TESTING
Simulator Solution Verification Results

Class: Form
ID: Breath Form 2 (Version 3)

Effective Date: June 1, 2015
Page: 1 of 1

Simulator Solution Level: 0.10 %

Target Concentration: 0.121 %
Acceptable Range: 0.117-0.125 %

Manufacturer: Guth Laboratories, Inc.
Lot Number: 18360

Analyst: Carol S Miller
Analysis Date: 12/11/2018

Bottle Number	% by wt	AVG
3	0.1207	0.1202
	0.1192	
	0.1207	
4	0.1208	0.1212
	0.1216	
	0.1212	
719	0.1218	0.1220
	0.1221	
	0.1220	
720	0.1216	0.1218
	0.1221	
	0.1218	
1446	0.1204	0.1209
	0.1212	
	0.1211	
1447	0.1222	0.1218
	0.1206	
	0.1226	
Grand Average		0.1213

pg 1 of 5 | C...

Approved By: Top Management

Print Date: 12/12/2018

New York State Police Crime Laboratory System
BREATH TESTING
Simulator Solution Verification QC Worksheet

Class: Form
ID: Breath Form 8 (Version 2)

Effective Date: January 10, 2017
Page: 1 of 1

Analysis Date: 12-11-18
Analyst Initials: CM

Breath Instr 2 Version 5

Simulator Solution Lot# 18360

Expiration Date	05-24-19
Received Date	12-10-18
Level	0.10
Bottle Number(s)	34, 71, 78, 1446, 1447

Internal Standard	Lot #	Expiration Date
n-propanol	ANC180718	01-17-19

Controls	Lot #	Expiration Date
0.08 % by wt	ENC180718	08/20-22
0.10 % by wt	ENC180502	01/20-23
0.20 % by wt	ENC180161	05/2022
0.30 % by wt	NA	NA
0.40 % by wt	NA	NA
0.50 % by wt	NA	NA
Composite	CSN180518	01-31-19

Instrumentation	Instrument ID/Serial #	Calibration Exp Date
Headspace GC	H.TX.HS2	01-17-19
Dilutor	11/3-Thermo-31.(Test)	05-31-19

Test Method Analyst Review

Batch Accepted ✓ Batch Rejected ____

Rejection reason/course of action: ____

Deviations/departures: ____

Comments: ____

Initial/Date: CM 12-12-18

Approved By: Top Management

Print Date: 12/11/2018

CITY COURT OF THE CITY OF NEW ROCHELLE
STATE OF NEW YORK: COUNTY OF WESTCHESTER

DOCKET NO.: CR 5662-21

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

GUSTAVO VILLAMARES SERRANO,

Defendant.

EXHIBIT 6

NOTICE OF MOTION

RANERI, LIGHT & O'DELL, PLLC

Attorneys for Defendant

150 Grand Street, Suite 502
White Plains, New York 10601
914-948-5525 (Tel)
914-948-5505 (Fax) *

*** LEGAL NOTICE: Notwithstanding NY CPLR § 2103(7), this listing does not imply consent to service of papers via facsimile.**

EXHIBIT 6

RECEIVED
NEW ROCHELLE CITY COURT
2022 FEB 15 PM ~~9:00~~ 4:48pm

OFFICE OF THE DISTRICT ATTORNEY
WESTCHESTER COUNTY

MIRIAM E. ROCAH
DISTRICT ATTORNEY
WESTCHESTER COUNTY COURTHOUSE
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601
(914) 995-3414

February 15, 2022

Raneri, Light & O'Dell, PLLC,
150 Grand Street, Suite 502,
White Plains, New York 10601
Attn: Dennis W. Light, Esq,

Re: **People v. GUSTAVO VILLAMARES SERRANO**
New Rochelle City Docket # CR-5662-21

Dear Mr. Light:

Enclosed please find an ***"AFFIRMATION IN OPPOSITION"*** relating to the captioned case.

If you have any questions regarding this matter, please contact this office at (914) 813-5800.

Thank you for your consideration in this matter.

Sincerely,

MIRIAM E. ROCAH
District Attorney

Brittany Burk
Assistant District Attorney
New Rochelle Branch

BB/ jv
Encl

cc: New Rochelle City Court
Attn: Criminal Court Clerk

☐ GREENBURGH BRANCH
188 Tarrytown Road
White Plains, NY 10607
(914) 995-4075

☒ NEW ROCHELLE BRANCH
475 North Avenue, 2nd Floor
New Rochelle, NY 10801
(914) 813-5800

☐ NORTHERN WESTCHESTER BRANCH
25 Moore Avenue
Mount Kisco, NY 10549
Tel: (914) 864-7122

☐ WHITE PLAINS BRANCH
City Court Building
77 South Lexington Avenue
White Plains, New York 10601
(914) 422-6265

☐ MOUNT VERNON BRANCH
2 Roosevelt Square
Mount Vernon, NY 10550
(914) 813-5025

☐ YORKTOWN BRANCH
1940 Commerce Street
Suite 204
Yorktown Heights, NY 10598
(914) 862-5140

☐ RYE BRANCH
3010 Westchester Avenue
Suite 205
Purchase, NY 10577
(914) 813-7257

☐ YONKERS BRANCH
104 South Broadway
Yonkers, NY 10701
(914) 231-2700

CITY COURT OF THE STATE OF NEW YORK
CITY OF NEW ROCHELLE

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

--against-

GUSTAVO VILLAMARES SERRANO,

Defendant.

----------X

AFFIRMATION IN OPPOSITION

Docket CR-5662-21

STATE OF NEW YORK)
: ss.:
COUNTY OF WESTCHESTER)

I, **BRITTANY J. BURK**, an attorney duly admitted to practice law in the Courts of the State of New York affirm the following under the penalties of perjury: I am an Assistant District Attorney of Westchester County and submit this affirmation in opposition to defendant's motion to invalidate the People's Certificate of Compliance. This affirmation is made upon information and belief, the source of which is the file of this matter maintained by the Office of the District Attorney.

STATEMENT OF FACTS

On October 1, 2021, defendant was arrested by members of the Westchester County Department of Public Safety and charged with Driving While Intoxicated; Per Se (Vehicle and Traffic Law §1192 [2]), Driving While Intoxicated (Vehicle and Traffic Law §1192 [3]), and Unlicensed Operation (Vehicle and Traffic Law §509 [1]).

On that date, the unlicensed defendant was involved in a motor vehicle accident. Responding police officers observed that defendant had trouble standing. They also observed that his speech was slurred, he smelled of alcohol, and had bloodshot, watery eyes. Defendant said that he had drank one beer a few hours earlier. Defendant took and failed three field

sobriety tests. He agreed to an alco-sensor test, which showed a positive result for the presence of alcohol. Defendant was arrested. He subsequently consented to a breath test – the results showed .16 of one percentum by weight of alcohol in his blood.

On November 22, 2021, defendant appeared with counsel, Dennis Light, Esq., before the Honorable Jared Rice of New Rochelle City Court and was arraigned on the aforementioned charges. The matter was adjourned at the People's request for discovery to December 6, 2021. In the interim, discovery was provided to defendant via the portal, on November 24, 2021. This included information pursuant to CPL 245.20(1)(k) for police and civilian witnesses, the records of gas chromatography, and the current certification certificate for the operator of the breath test.

On December 6, 2021, defendant and his attorney appeared before the Court. The People stated on the record that discovery had been served on November 24, 2021, and the matter was adjourned to January 4, 2022 at the People's request for additional discovery and to file a Certificate of Compliance (COC).

On January 4, 2022, defendant and his attorney appeared before the Court. The People stated on the record that a Discovery Disclosure Index, a COC, and a Statement of Readiness had been filed with the Court and served on defense. Defendant argued that the People have not complied with their discovery obligations. A motion schedule was set and the case was adjourned to April 4, 2022 for decision. A few days later, the People provided defendant with updated (1)(k) forms for two police witnesses. There was no known (1)(k) information for any witness either before or after the People filed their COC. Subsequent to filing the COC, the People obtained an updated (1)(k) form from Officer Niall Nerney on February 9, 2022, and he indicated to the undersigned that he was advised not to answer question number 6 by his superiors.

On January 27, 2022, the People received defendant's instant motion to invalidate the COC or, in the alternative, for the preclusion of evidence.

WHEREFORE, for the reasons more fully set forth in the annexed Memorandum of Law, this Court should summarily deny defendant's motion in its entirety.

Affirmed to be True.

Dated: February 15, 2022
New Rochelle, NY

BRITTANY J. BURK
Assistant District Attorney

MEMORANDUM OF LAW

I. THE STANDARDIZED FIELD SOBRIETY TEST (SFST) TRAINING MANUAL AND THE DATAMASTER OPERATING MANUAL ARE NOT INCLUDED IN AUTOMATIC DISCOVERY BECAUSE THEY DO NOT RELATE TO THE SUBJECT MATTER OF THE INSTANT CASE.

Defendant challenges the validity of the People's certificate of compliance because of an alleged failure to provide him with a training manual and operating manual. Defendant's arguments are meritless, since the People do not have a duty to disclose these materials that are not related to this particular criminal proceeding.

Criminal Procedure Law article 245 provides a non-inclusive list of items required to be disclosed to the defendant (CPL 245.20[1]). This obligation includes "*all items and information that relate to the subject matter of the case* and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control" (*id.* [emphasis added]). Further, CPL 245.20(1)(s) provides that in any prosecution alleging a violation of the vehicle and traffic law, the People shall disclose:

> all records of calibration, certification, inspection, repair or maintenance of machines and instruments utilized to perform any scientific tests and experiments, including but not limited to any test of a person's breath, blood, urine or saliva, for the period of six months prior and six months after such test was conducted, including the records of gas chromatography related to the certification of all reference standards and the certification certificate, if any, held by the operator of the machine or instrument.

Defendant complains that he was not provided the SFST Training Manual and Datamaster Operating Manual . These materials are clearly not encompassed within CPL 245.20(1)(s). Arguing the subject matter for which defendant seeks production of these materials is "scientific in nature" (affirmation of Dennis W. Light, Esq., dated January 25, 2022, ¶ 21- ¶ 24), defendant

makes a tortured argument to attempt to make them fit into the parameters of CPL 245.20(1)(j).

Defendant acknowledges that CPL 245.20(1)(j) only requires the People to disclose:

> All reports, documents, records, data, calculations or writings . . . concerning . . . scientific tests . . . *relating to the criminal action or proceeding which were made by or at the request or direction of a public servant engaged in law enforcement activity, or which were made by a person whom the prosecutor intends to call as a witness at trial or a pre-trial hearing* (CPL 245.20[1][j]) [emphasis added]; *see* affirmation of Dennis W. Light, Esq., dated January 25, 2022, ¶ 20).

Training and operating manuals are not encompassed by the plain meaning of the statute (*see People v Lustig*, 68 Misc3d 234, 246 [Sup Ct, Queens County 2020]). Defendant nonetheless makes the strident declaration that because the breath test is a scientific test, the People are required, "*as a matter of law* [] to disclose the respective user/operating manual to the Defendant" (affirmation of Dennis W. Light, Esq., dated January 25, 2022, ¶ 24 [emphasis added]). Defendant does not cite any authority for this proposition that, "as a matter of law," the People, under CPL 245.20(1)(j), are required to provide manuals not created for this case, and not created by or at the direction of any witness the People intend to call (*see e.g. Lustig*, 68 Misc3d at 246; *People Ordonez*, 72 Misc3d 739 [County Ct, Orange County 2021]).

As to one of the administered field tests, which defendant failed (the Horizontal Gaze Nystagmus test), defendant argues the test is "scientific in nature," and it will be necessary for the People to lay a proper foundation for its admission at trial, defendant "should have the training manuals and/or books [the police witness] will rely on for the making of an opinion regarding the Defendant's BAC on October 1, 2021, at approximately 7:13pm" (*see* affirmation of Dennis W. Light, Esq., dated January 25, 2022, ¶ 21- ¶ 23). In addition to not being statutorily required, defendant's argument is based on several assumptions and anticipated events that have not, and may never occur – whether the People will seek to admit evidence of the test

by offering a foundation, and if done – whether there is a training manual that the witness will actually rely on to form an opinion on defendant's intoxication. Under defendant's reasoning, anything would be discoverable if there is a chance it may be helpful to defendant and he can envision a possible line of cross-examination. Defendant seeks to greatly expand the statutory language "relating to the criminal action or proceeding" (CPL 245.20[1][j]; *see also* CPL 245.20[1] ["that relate to the subject matter of the case"]) to anything that relates to the *charge*. Defendant is free to exercise any options available to him to obtain the sought materials, but the People have no disclosure obligation simply because defendant envisions a possible line of cross-examination through materials that may relate to a charge of intoxicated driving, but do not relate to this particular criminal action.

Defendant asserts in a blanket statement that these documents are necessary and relevant for effective cross-examination, but fails to describe specifically what kind of information they contain, if any, that relate to the subject matter of *this* case. "It is the moving party's responsibility to set forth a good faith basis for their requests in their motion. As the defendant has failed to articulate any basis for its belief that these items contain material relating to the subject matter of this case," his motion to invalidate the certificate of compliance on this basis should be denied (*People v Alvarez*, 71 Misc3d 1206[A] [Sup Ct, Queens County 2021]).

While defendant is correct that there is a presumption of disclosure, and statutory lists are not meant to be exhaustive and, indeed explicitly include the language "including but not limited to," he ignores that what is included in the list of discoverable materials in these categories are all materials and information related to the *particular criminal action at hand* (CPL 245.20 [1][j], [s]). Since the legislature enumerated items of the same character – *i.e.* all items that have an *actual nexus* to the criminal action at hand – defendant's assertion that materials not related to

initial certificate of compliance and certificate of readiness. Therefore, delayed disclosure does not, alone, require the striking of a certificate of readiness, especially where the defense has not alleged any prejudice" (*People v Nelson*, 67 Misc3d 313 [County Ct, Franklin County 2020]).

Here, defendant was provided with information pursuant to CPL 245.20(1)(k)(iv) with respect to Officers Marco, Baker, and Nerney prior to the filing of our COC. Only one of these forms (for Officer Nerney) specifically requested only substantiated complaints. As part of our continuing discovery obligation, the People served on defendant updated information relating to Officers Marco and Baker, and served on defendant information relating to Officer Hearle, which was not previously available prior to the filing of our COC. The information provided by the aforementioned officers prior and subsequent to the filing of the COC was identical, which is evidenced by the People's disclosure documents, and thus the People relied in good faith on said information when filing our COC. Moreover, there was no discoverable (1)(k) information in either the forms disclosed prior to filing the COC, or after, thus, defendant cannot show any prejudice. Indeed, defendant has not alleged any. In addition, the People sought and obtained an updated (1)(k) form, which did not specify only substantiated complaints, from Officer Nerney on February 9, 2022, and Officer Nerney refused to answer question number 6. The information is not within the People's possession or control. The People, however, have exercised due diligence in requesting said material, if any exists, within our Discovery Demand Letter, which was sent to the department upon commencement of this case, and requested an updated (1)(k) form Officer Nerney twice via email. The People will continue to exercise due diligence in gathering any information that may exist.

Defendant further argues that our COC should be invalidated because we did not indicate on our COC the nonexistence of information that is required under CPL 245.20(1)(k)(iv) as it

relates to civil cases. Defendant then mentions several civil matters but concedes that he does not even know if the individuals named in those matters are the same individuals who are police witnesses here.[1] The "Nature of [the] Suit" of the 1995 federal action, filed in the Eastern District of New York, which names a "Kirk A. Baker" as one of the defendants, is a motor vehicle tort claim (defendant's exhibit 10). The nature of the state civil suits, filed in New York County Supreme Court, that name a "Niall Nerney" as a plaintiff both involve a claim of injury in 2015 by the plaintiff as an employee of the defendant construction company (*id.*). Defendant cannot show any relevance to the People's disclosure obligation under CPL 245.20(1)(k). Defendant's interpretation of the People's obligations knows no bounds. Under his reasoning, the People would have to search all databases, in every county, in every state, in every federal district, on all witnesses, before filing a certificate of compliance, in a search for any legal proceeding in which those witnesses may have been involved over the course of their lifetime (*see e.g. People v Garrett*, 23 NY3d 878, 890 [2014] [discussing the "unacceptable burden" of requiring prosecutors to search every federal and state court where their officers had a connection "just in case some impeaching evidence may show up"]). Therefore, defendant has not provided a good faith basis for raising this issue. Indeed, after conducting his search, and locating these cases, defendant does not show, or even allege, the existence of impeachment material, much less prejudice.

Lastly, defendant argues that the People failed to meet our discovery obligations pursuant to CPL 245.20(1)(k) by failing to provide any information regarding potential civilian witness Kelsey Picciano. While a witness questionnaire for Kelsey Picciano was not provided, on the

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[1] The named individual "Kirk A. Baker" from the civil matter referenced by the People is not PO Baker as it relates to the instant matter. The named individual "Niall Nerney" is the same individual as PO Nerney as it relates to the instant matter.

People's discovery addendum we indicated that we received no relevant information from any sources, and thus have exercised due diligence and have satisfied our discovery obligation (see attached Exhibit).

Considering the totality of the circumstances, the People's 1(k) inquiry about a broad area of potential impeachment material, including any "substantiated administrative, personnel or civilian complaints implicating the witness's honesty and integrity," was entirely reasonable and illustrative of the People's good faith efforts to comply with CPL article 245. Any claim that the People's certificate of compliance is invalid merely because one form, for one police witness, only sought the production of substantiated complaints implicating a police witness's honesty and integrity, or alternatively, make repetitive 1(k) inquiries during the course of this case, ignores the plain text of CPL 245.50, and the broader efforts of the People that have resulted in the production of voluminous discoverable material. Indeed, a finding that the People were required, as a matter of law, to seek unsubstantiated complaints of misconduct, or that the 1(k) material produced by the People was stale, is far from determinative of whether the People filed a valid certificate of compliance. The determinative issue under CPL 245.50(1) is not whether the People erred by not seeking either unsubstantiated complaints or more up-to-date inquiries, but whether, under the circumstances, the People's overall efforts to comply with CPL article 245 was reasonable and done in good faith, a far different and more flexible standard.

As noted, CPL 245.50(1) provides that "[n]o adverse consequences to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith and reasonable under the circumstances; but, the court may grant a remedy or sanction for a discovery violation as provided in section 245.80 of this article." It bears repeating that, when read as whole, this provision confirms the Legislature's intent that a certificate of compliance not

be deemed invalid solely on the ground that the People did not produce every discoverable item or piece of information. Put another way, the terms of the statute evidence the Legislature's intent that, even a violation of CPL article 245, standing alone, will not render a certificate of compliance invalid. And, it must be emphasized that rather than requiring strict compliance, or even error-free compliance, the statute merely requires the filing of a certificate of compliance "in good faith and reasonable under the circumstances" (CPL 245.50[1]). In short, while discovery consistent with CPL article 245 surely evidences good faith and reasonable efforts, less than full compliance does not necessarily equate to less than good faith, reasonable efforts.

Judged by this standard, the absence of an inquiry seeking unsubstantiated complaints against the police cannot constitute a basis to invalidate the People's certificate of compliance, especially here where only one form, for one officer, specifically limited the inquiry to substantiated complaints. To start, CPL article 245 is wholly devoid of any express reference to the disclosure of complaints against police officers, whether substantiated or unsubstantiated. No claim can therefore be made that it is beyond dispute that the disclosure of unsubstantiated complaints of misconduct is mandated.

While the mandate of CPL 245.20(1)(k)(iv) for the disclose of "[a]ll evidence or information" that "tends to impeach the credibility of a testifying prosecution witness" is broad given its generalized terms, for the same reason, the scope of this provision is subject to interpretation. Importantly, no binding authority – from the Court of Appeals, Appellate Division, or Appellate Term – exists construing the terms of this still relatively new statutory provision, never mind specifically holding that unsubstantiated complaints of police misconduct must be sought and disclosed by the People. None.

True, courts of coordinate jurisdiction have issued decisions holding that the People are required to seek and produce unsubstantiated claims of misconduct reflecting negatively on a police witness's credibility (*see, e.g., People v Castellanos*, 72 Misc3d 371 [Sup Ct, Bronx County 2021]; *People v Randolph*, 69 Misc3d 770, 772 [Sup Ct Suffolk County 2020]). But, it is equally true that this interpretation of the law is not universal. Showing the extant conflict in the law, on June 14, 2021, a court expressly found that "an unsubstantiated complaint does not provide a good faith basis to inquire and, thus, does not constitute discoverable impeachment material" (*see People v Perez*, 73 Misc3d 171 [Sup Ct, Queens County, 2021]; *see also People v Davis*, 67 Misc3d 391, 401 [Crim Ct Bronx County 2020]).

Given the extant absence of controlling authority, conflict in those handful of decisions that have addressed the issue, and decisions holding that unsubstantiated complaints of police misconduct need not be disclosed, any determination that the People did not act in good faith or reasonably by not seeking unsubstantiated complaints from one witness runs afoul of CPL 245.50(1) in two respects. First, it fails to give the required consideration to "the circumstances" of the case by turning a blind eye to the unsettled state of the law. Second, although this Court is free to conclude that the statute requires the People to seek and disclose unsubstantiated complaints (and order the disclosure of that material), such a determination of error does not equate to a finding that the People did not act in good faith. In that instance, as the statute makes clear, defendant may be entitled to a remedy for the erroneous non-production of discoverable material, "a discovery violation" (CPL 245.50[1]; 245.80[1]). But, it is equally clear from the statute that no adverse consequence – such as the striking of a certificate of compliance and consequent rendering of a previous statement of readiness as illusory – may result to the prosecution under the present circumstance, where the People have clearly acted reasonably and

in good faith (CPL 245.50 [1]; *People v Bruni*, 71 Misc3d 913, 921 [County Ct, Albany County 2021]). This is especially true here where there is no non-production.

The fact that the Office of the Westchester County District Attorney has modified its 1(k) inquiry since the effective date of CPL article 245 and now generally seeks unsubstantiated complaints of misconduct implicating a police witness's credibility does not undermine the People's demonstration of good faith. As noted above, given the unsettled law, even in the absence of a *current* inquiry seeking unsubstantiated complaints, the People cannot be deemed not to have acted in good faith or reasonably. *A fortiori*, the People cannot be faulted for not previously making that inquiry.

In *People v Bruni* (71 Misc 3d 913), a challenge was similarly made to a certificate of compliance filed by the prosecution based upon, *inter alia*, the disclosure by email of additional discovery materials after the certificate had been filed (*id.* at 924). The court, however, rejected any notion that the additional disclosures proved that the prosecution had acted unreasonably or in bad faith (*id.*). The court offered the following reason:

> These emails have actually provided the court with further evidence that the People made significant efforts in continuing to provide discovery materials to the defendant and adhere to their 'continuing duty to disclose' under CPL 245.60. To hold these ongoing efforts against the People would be placing them in a catch-22: if they provide supplementary discovery material and status updates to defense counsel, then they will be accused of filing an invalid certificate of compliance; and if they do not, then they will be accused of attempting to conceal discovery material (*id.*).

Based upon the same reasoning, the general expansion of the 1(k) inquiry conducted by the Office of the District Attorney as circumstances changed should be considered illustrative of the People's good faith and reasonable efforts to comply with CPL article 245.

Just as the People should not be deemed to have acted unreasonably for not seeking unsubstantiated complaints of police misconduct, the People's certificate of compliance should not be deemed filed unreasonably or in less than good faith merely because, during the pendency of this case, the testifying police witnesses were not individually asked to complete yet another 1(k) questionnaire. To reiterate, before defendant was arrested in this case, the officers had completed 1(k) questionnaires. The questionnaire sought information that could be considered as "tending to impeach" the officer's credibility; except for the inquiry about any prior criminal conviction and pending criminal charges against the officer, none of the information sought by the People is expressly mandated by CPL article 245, including 245.20(1)(k) (*cf* CPL 245.20[1][p] [requiring disclosure of judgments of conviction]; 245.20 [1][q] [requiring disclosure of known pending criminal actions]). In recognition that the information could be potentially discoverable in other cases, after receiving the responses, the completed 1(k) forms were saved in a database maintained by the Office of the District Attorney, and following defendant's arrest, the 1(k) forms were retrieved from that database and provided to defendant.

Any claim that the People did not act in good faith or reasonably by not also asking the police officers to complete another 1(k) form immediately following defendant's arrest once again ignores "the circumstances"; and, unreasonably elevates what, at most could be considered a *potential* discovery violation, to a windfall for defendant. Consistent with the People's "continuing duty to disclose" (CPL 245.60), the 1(k) form also advises each officer, "If you become aware of any new information, please contact the ADA."[2] This request, however, was only one component of the People's continuing efforts to collect 1(k) information.

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[2] In the event an assistant district attorney is notified by a police officer of a change in circumstance or given updated 1(k) information, the assistant district attorney is generally directed to forward that information to the custodian of the 1(k) questionnaires so that the record relating to that officer may be updated and the new information made available for other assistant district attorneys to disclose.

Following defendant's arrest, a written request was also sent to the Westchester County Department of Public Safety ("the department"), specifically seeking discoverable material. The request alerts the department that the request is "time sensitive" and material should be produced in "an expeditious and organized manner." Further, and directly addressing concerns about the staleness of information collected, the request highlights that the duty to produce materials is ongoing, explaining:

> Throughout the investigation and prosecution of this case there will remain a continuing duty to expeditiously provide any and all additional records, files, items, information, and material as they are created, learned, discovered, located, or obtained by your agency or by any personnel member.

The request then goes on to detail the demanded discoverable material by tracking the language of CPL article 245, and again seeking the items of information specified in the 1(k) questionnaire.

Considered in combination with the collection and production of the prior completed 1(k) material, the People acted in good faith and reasonably to produce up-to-date material. Demonstrative of the People's efforts, the information was sought from two separate sources – the individual officer and the department. Both the individual and department requests not only specifically identified the relevant material, but also reminded the recipients of the continuing duty to produce material.

Any claim that this effort was deficient is based upon speculation and again conflates the concepts of "good faith" and "reasonable[ness]" with strict compliance. Given the breadth and nature of the information sought in the 1(k) questionnaire, the responsive information is admittedly subject to change. But it cannot be said that a police officer's conviction for a crime or prosecution for an offense is likely to occur with such frequency that repetitive inquiries are

reasonably necessary to capture discoverable material. While new complaints of misconduct may be made, or investigations relating to past complaints completed, with greater frequency than criminal convictions or prosecutions, defendant has not offered any facts related to this case which would have triggered the prosecution to exercise greater diligence in seeking such information. Importantly, there is also no reason to doubt that the officer or the department, and to be sure both, would not on an ongoing basis follow up with the Office of the District Attorney, as directed in writing to do. After all, CPL 245.20(5) indicates that CPL 245.20(1) "shall have the force and effect of a court order," and CPL 245.20(1)(k) mandates disclosure of specified information, "including that which is known to police."

Finally, in seeking to invalidate the People's certificate of compliance and the People's statement of readiness, and thus obtain the drastic remedy of dismissal, defendant elevates the importance of the 1(k) information beyond what is reasonable under the circumstances. In stark contrast to the discovery provided to defendant directly relating to the instant case, the 1(k) information is generally collateral, impeachment information, a fact germane to this Court's consideration of what should be considered reasonable efforts by the People. For example, it would be wholly unreasonable to assess the People's efforts to preserve, obtain and produce a videotaped recording of a charged offense or confession, with the same degree of scrutiny as the theoretical tangential impeachment upon which defendant has fixated.

Along those same lines, and even more importantly, defendant's motion is defective because there is no demonstration that the supposedly undisclosed impeachment material exists. "The duty to disclose information in these circumstances, of course, cannot be greater than the power to acquire it" (*People v Santorelli*, 95 NY2d 412, 421 [2000]). To invalidate the certificate of compliance without a showing that undisclosed material exists, and in this case,

where in fact a showing has been made after diligent efforts that the material does not exist, would also contravene CPL 245.50(1), and the overall purpose of linking discovery and trial readiness.

Under this circumstance, dismissal based upon the non-production of non-existent material is illogical, and at odds with both CPL 245.50(1) and the current linkage between discovery and speedy trial. By its terms, CPL 245.50(1) mandates a certificate of compliance verifying the disclosure of "all known material and subject to discovery"; the existence of discoverable material is presumed. And, further showing that the existence of discoverable material is presumed, except for certain circumstances not relevant here, under CPL 245.50(3), "the prosecution shall not be deemed ready for trial" absent the filing of a proper certificate of compliance. Implicit to this provision, but without question, non-existent material could not hamper the People's ability to go to trial, or a defendant's ability to present a defense. Defendant's focus on inquiries without showing that any degree of inquiry could have produced discoverable material is, thus, obviously misdirected.

Once again confirming that discoverable material must have existed at some point, CPL 245.50(3) provides that the prosecution may be deemed ready for trial "where information that might be considered discoverable under this article cannot be disclosed because it has been lost, destroyed, or otherwise unavailable," despite "diligent and good faith efforts, reasonable under the circumstances." In that instance, a defendant may be entitled to a remedy or sanction pursuant to CPL 245.80(1)(b), but only upon a showing that the material "may have contained some information relevant to a contested issue." Here, defendant requests either the striking of the People's COC or, in the alternative, for preclusion of the testimony of *all* police and civilian witnesses, as well as the breath test results (affirmation of Dennis W. Light, Esq., dated January

25, 2022, ¶ 38). "Preclusion of evidence is a severe sanction, not to be employed unless any potential prejudice arising from the failure to disclose cannot be cured by a lesser sanction" *People v Jenkins*, 98 NY2d 280, 284 [2002]). Defendant's requested preclusion of the testimony of *all* witness and the breath test results would of course completely gut the People's case and be tantamount to dismissal. Preclusion of evidence based upon the inadequacy of the People's inquiry about material that does not even exist, where defendant is not entitled to any lesser remedy or sanction under CPL article 245, would thus surely be an absurd and unjustified result.

Defendant's assertion that allowing for self-reporting is "an insufficient disclosure procedure and not good faith, diligent and reasonable inquiry into the existence of impeachment materials" (affirmation of Dennis W. Light, Esq., dated January 25, 2022, ¶ 38) is merely his opinion, and is not supported by the statute or caselaw. Any suggestion that the People – in asking police officers to self-report through the 1(k) questionnaires information tending to impeach their credibility – must, or even should, as a matter of course, also require those officers to either swear to any disclosure or make disclosures under penalty of perjury, finds no support in CPL article 245; runs afoul of long-settled fundamental principles of discovery; ignores extant safeguards for the open exchange of information; and, is improperly premised on the unfounded notion that police witnesses are potentially unreliable reporters, and, therefore, those additional protections are required to ensure that discoverable information has not been withheld.

To be sure, there is no express mandate in CPL article 245 that the People seek, or police officers make, disclosures of 1(k) material (or any other discoverable material) under oath. Nor is there any express mandate that the People seek, or police witnesses give, sworn assurance that such material does not exist. Indeed, there is no statutory mandate that the People even make written inquiry, as was done here through the use of the 1(k) questionnaire. Accordingly, the

People cannot be faulted for not providing 1(k) disclosures in the form of sworn statements by police witnesses attesting to the accuracy of the 1(k) disclosures or the non-existence of any relevant 1(k) information, or in any particular form. Any claim to the contrary contravenes settled law that "[w]here no statutory right of discovery is provided, no substantive right of discovery exists" (*Brown v Grosso*, 285 AD2d 642, 644 [2d Dept 2001]; *see generally People v Colavito*, 87 NY2d 423, 427 [1996]).

For the same reasons, the People cannot be deemed to have failed to act either with due diligence or reasonably by not seeking sworn assurances from testifying police officers regarding the accuracy of their 1(k) disclosures or non-disclosures, or by combing through records. By its plain terms, CPL 245.50(1) merely requires, as relevant here, that the People file with the court and serve upon a defendant a certificate of compliance that the People exercised "due diligence" and made "*reasonable* inquiries" to "ascertain the existence of material and information subject to discovery" (emphasis added); the statute does not require an inquiry in any particular form, including "sworn" inquiries, inquiries "under oath," written inquiries, or inquiries requiring the signature of the responding officer. Significantly, in other provisions of the CPL, the Legislature has required submissions to be sworn or subscribed (*see, e.g.*, CPL 110.15 [1] [requiring specified accusatory instruments to be "subscribed and verified by a person known as the 'complainant'"]; CPL 100.30 [setting forth how specified accusatory instruments may be "verified"]; CPL 100.35 [requiring prosecutor's information to be "subscribed by the district attorney by whom it is filed"]; CPL 710.60 [1] [requiring "sworn allegations of fact" in support of suppression motion]). Thus, the absence of a similar mandate in CPL article 245 that 1(k) inquiries be sworn or "verified" evidences the Legislature's intent that submission of sworn (verified) 1(k) inquiries is not mandated (*cf People v Excell*, 254 AD2d 369, 369-370 [2d Dept

1998] [comparing different Penal Law provisions to infer legislative intent]; *see also Town of Eastchester v NYS Board of Real Property Services*, 23 AD3d 484, 485 [2d Dept 2005] [*quoting* McKinney's Cons. Laws of N.Y., Book 1, Statutes § 240] ["Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, 'where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted and excluded'"]). Notably, CPL 245.50 does not require that the certificate filed in court confirming the prosecution's discovery compliance be sworn (or subscribed); therefore, it would be incongruous to require that an underlying inquiry, relating to a discrete item of information, be sworn. The clear statutory language requires no such thing.

Nor can the suggested requirement that the People confirm the inquiries themselves, or seek sworn assurance from police officers in 1(k) inquiries be justified based on the supposition that police officers, as a result of their own self-interest, may deliberately withhold information impeaching their credibility. First, discovery in excess of what is mandated by statute cannot be ordered "based upon principles of due process" (*Brown v Grosso*, 285 AD2d at 644), and as demonstrated above, the statute does not require sworn responses to prosecution inquiries, or any other particular form of inquiry. Based upon the absence of any express authority for the Court to mandate a particular type of inquiry, the Court cannot indirectly mandate such an inquiry by finding that, in its absence, the People failed to act with due diligence. Second, there is no reason to broadly cast suspicion on the accuracy of police responses to 1(k) inquiries where the statute, as relevant here, compels compliance by, *inter alia*: CPL 245.20(5), which expressly provides that CPL 245.10 and 245.20, subdivisions 1 through 4, "shall have the force and effect of a court order, and failure to provide discovery pursuant to such section or subdivision may

result in application for any remedies or sanctions permitted for non-compliance with a court order" under CPL 245.80; and, CPL 245.55 (1), which mandates the "flow of information" "pertinent to the defendant and the offense or offenses charges," including 1(k) material between the prosecution and police. Third, and finally, the underpinning of faulting the People for not conducting the inquiry in any particular way – the sweeping suspicion that police witnesses may withhold information – lacks any specific, individualized factual basis. Although since the inception of CPL article 245 some police officers in Westchester County have refused to answer certain 1(k) questions, no bad faith can be divined from those refusals because: even now, the scope of the 1(k) disclosure mandate remains unsettled (*see, e.g., People v Perez*, 73 Misc3d 171 [finding that unsubstantiated complaints of misconduct do not tend to impeach a testifying officer's credibility, and, therefore, are not discoverable]); before its repeal, Civil Rights Law § 50-a could be construed as protecting certain disciplinary information as confidential; and, even after the repeal of Civil Rights Law § 50-a, police departments, outside the context of CPL article 245, have asserted independent legal grounds to keep unsubstantiated (and other) disciplinary claims confidential, and those objections were only finally rejected by the courts in 2021 (*see, e.g., Uniformed Fire Officers Association v Blasio*, 846 Fed Appx 25 [2d Cir, February 16, 2021]).[3]

Given the absence of any statutory mandate for how 1(k) inquiries are to be performed, and the extant mandates that CPL article 245.10 and 245.20 (1-4) shall be considered equivalent to a court order and that the People and police shall maintain a "flow of information," the People

[3] Although the plaintiffs in the *Uniformed Fire Officers* case were representatives of the City of New York, the Westchester Affiliated Police Association filed an *amicus* brief with the United States Court of Appeals for the Second Circuit in support of the plaintiff's action and prohibiting disclosure of, *inter alia*, unsubstantiated disciplinary complaints (2020 WL 6275133 [amicus brief]).

cannot be deemed to have acted with less than due diligence because of the manner in which they conducted their inquiry here.

III. THE PEOPLE HAVE COMPLIED WITH OUR DISCOVERY OBLIGATION TO PROVIDE DEFENDANT WITH DISCOVERABLE MATERIAL PURSUANT TO CPL 245.20(1)(s).

Defendant argues that the People failed to disclose PO Nerney's valid and current certification certificate as required by CPL 245.20(1)(s). However, that document was already served on defense on November 30, 2021 labeled "Nerney BAO.pdf" (see attached Exhibit). As noted on the certificate, PO Nerney's certification was issued on December 12, 2019 and expired on December 12, 2021. The date of the breath test for the instant matter was conducted by PO Nerney on October 1, 2021, at which time PO Nerney's certification was valid and current.

Defendant further argues that the People are not in compliance with our discovery obligations pursuant to CPL 245.20(1)(s) by our failure to provide "records of gas chromatography related to the certification of all reference standards" (affirmation of Dennis W. Light, Esq., dated January 25, 2022, ¶ 50; CPL 245.20[s]). Similarly, these records were also provided to defendant on November 30, 2021 labeled "SimSoIn21170.pdf" (see Exhibit). Thus, the People have complied with all of our discovery obligations under CPL 245.20(1)(s).

IV. THE PEOPLE HAVE EXERCISED DUE DILLIGENCE AND FILED THE CERTIFICATE OF COMPLIANCE IN GOOD FAITH.

Defendant's motion to invalidate the People's Certificate of Compliance (COC), and nullifying the People's stated readiness should be denied. Defendant moves for the aforementioned relief on the grounds that the People have not turned over sufficient information related to evidence and information to testifying prosecution witnesses pursuant to CPL 245.20(1)(k) that tends to impeach the credibility of testifying officers, as well as one civilian

witness, and material under CPL 245.20(1)(j), (s). Defendant argues the People failed to satisfy our discovery obligations and file our COC in good faith. However, the People exercised due diligence in all aspects of our investigation and in seeking relevant discovery. The People provided defendant with all relevant documentation, pursuant to our continuing discovery obligation. At that time, we acted in good faith by suppling all information which we believed was proper to disclose. As such, defendant's motion should be denied in its entirety.

CPL 245.50 provides that "no adverse consequence to the prosecution or the prosecutor shall result from the filling of a certificate of compliance in good faith and reasonable under the circumstances." In this regard, numerous courts have found that belated disclosures should not invalidate a certificate of compliance that was made in good faith after the exercise of due diligence where the delay resulted from, for example, minor oversights in the production of material, delayed discovery of the existence of certain items, or a good faith position that the material in question was not discoverable (*Alvarez*, 71 Misc3d 1206). The striking of a certificate of readiness is "a drastic remedy which should be used both sparingly and judiciously" (*Nelson*, 67 Misc.d 313).

> As the legislative history of article 245 indicates, and as the article's sanctions and remedies provisions suggest, the new discovery law, designed as it was to be remedial in nature, should not be construed as an inescapable trap for the diligent prosecutor who professionally, assiduously and in good faith attempts to comply with their new and extensive requirements under the discovery statute, but through no fault of his or her own, is unable to comply with every aspect of the automatic discovery rules specified in CPL 245.20 (*People v Erby*, 68 Misc3d 625, 633 [Sup Ct, Bronx County 2020]).

Assuming, *arguendo,* that any information not disclosed was discoverable and within the People's possession, custody, or control, striking the Certificate of Compliance is a drastic remedy. Where the People filed a Certificate of Compliance without turning over police 911

records, the Court found that the Certificate of Compliance was valid, even though it identified discovery material the prosecution was aware of, but did not yet possess. "That section requires that the Certificate of Compliance state that…the prosecutor has disclosed and made available all known material and information subject to discovery…If additional discovery is subsequently provided prior to trial pursuant to section 256.60…, a supplemental certificate shall be served" (*People v Pealo*, 71 Misc3d 337 [Justice Ct, Monroe County, 2021]). A certificate of compliance was also deemed valid, where the prosecutor's initial disclosures did not include maintenance records for breath testing machine and after exercising due diligence to obtain and furnish all discoverable items, the prosecutor appropriately discharged her continuing duty to disclose by obtaining the records and providing them to defense counsel as soon as she learned of their existence (*People v Davis*, 70 Misc3d 467 [October 9, 2020]).

While CPL Article 245 references the importance of exercising due diligence and good faith numerous times, it does not qualify these terms or their defining actions. As such, there is no statutorily-mandated bright line rule to resolve discovery disputes. Rather, the analysis of whether due diligence was exercised in providing discovery is holistic: resolution requires consideration of the totality of the circumstances (*see People v Williams*, County Court, Albany County, July 6, 2021, Ackerman, J., Index DA 260-20 [determination of discovery disputes must be made depending on the unique case at hand]; *see also Bruni*, 71 Misc 3d at 920 ["discovery disputes must be thoroughly examined to determine the appropriate outcome on a case-by-case basis"]). Relevant to the determination of whether the filing of a certificate of compliance was reasonable under the circumstances is "whether the People *reasonably and substantially adhered* to its discovery obligations and acted in good faith in doing so" (*Bruni*, 71 Misc 3d at 922 [emphasis added]). Put another way, resolution of discovery disputes requires the court to

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determine "whether the People made honest efforts to comply with CPL 245.20(1) prior to the filing of a certificate of compliance and statement of readiness" (*Williams*, County Court, Albany County, July 6, 2021, Ackerman, J., Index DA 260-20). In examining whether the People made these honest efforts, "good faith, due diligence, and reasonableness under the circumstances are the touchstones by which a certificate of compliance must be evaluated" (*id.*, *citing People v Perez*, 73 Misc3d 171).

Perfect compliance — that is, disclosure of every possible discoverable item under CPL 245.20 (1) — is not required by statute before filing a certificate of compliance (*see* CPL 245.50[1]; *see Williams*, County Court, Albany County, July 6, 2021, Ackerman, J., Index DA 260-20 [court should not strictly consider whether every possible discovery item has been turned over at the filing of the certificate of compliance]; *see also Erby*, 68 Misc 3d at 632 [declining to require full compliance with automatic disclosure requirements to file certificate of compliance or depend on CPL 30.30 exclusions]). If the Legislature had intended to require complete disclosure before filing a certificate of compliance or declaring readiness for trial, this could have been easily mandated explicitly (*see People v Askin*, 68 Misc 3d 372, 378-379 [County Ct, Nassau County 2020] [rejecting claim that complete disclosure of discovery is required before filing certificate of compliance as "unreasonable" and "clearly not what the Legislature intended"]). However, with such intent, there would have been no need to discuss varying timeframes for discovery, continuing discovery, or supplemental certificates of compliance (*see id.*). Indeed, analysis of the other provisions of CPL 245 — specifically the discussions of "additional discovery" and "supplemental certificates of compliance" in CPL 245.50 (1); the "continuing duty to disclose" in CPL 245.60; and the "flow of information" in CPL 245.55 — reveals the Legislature's intent that discovery disclosure would be an ongoing process (*see* CPL

245.50 [1]; CPL 245.60, 245.50 [1]; *see also Askin*, 68 Misc 3d at 378-379 [finding these provisions, as well as the "prejudice" evaluation of CPL 245.80, as indicating legislative intent for ongoing discovery]; *People v Nelson*, 67 Misc 3d 313, 315 [County Court, Franklin County 2020] [concluding these provisions of the new law "contemplate disclosure of materials and evidence after the filing of the initial certificate of compliance and certificate of readiness"]).

That the statute provides for both continuing discovery and the possibility of sanctions (rather than dismissal of a certificate of compliance) for belated discovery causing prejudice indicates that the Legislature did not intend to require perfect discovery compliance for a certificate of compliance to be valid (*see Erby*, 68 Misc 3d at 631 [finding CPL 245's references to supplemental certificates and "the inclusion of remedies and sanctions for discovery violations of a material nature, inferentially, and powerfully, suggest that fidelity to an absolute, uncompromising and inflexible disclosure standard . . . is neither required nor desirable"]; *see also Askin*, 68 Misc 3d at 378-379 [finding these provisions, as well as the "prejudice" evaluation of CPL 245.80, as indicating legislative intent for ongoing discovery]).

An examination of the People's ongoing efforts to fulfill their discovery obligations shows that they exercised due diligence and filed a certificate of compliance in good faith that was reasonable under the circumstances. Defendant's motion to invalidate the People's certificate of compliance or for preclusion of evidence merely because one of the (1)(k) forms asked only about the existence of substantiated complaints, and because defendant unearthed a few civil cases that may or may not involve two of the People's police witnesses, but which certainly do not evidence non-production of discoverable information in all events, is meritless.

In light of the foregoing, the People have complied with our discovery obligations and have turned over all known material and information subject to discovery at this time. Defendant's motion should be denied.

WHEREFORE, the People respectfully request defendant's motion be denied in all respects except as heretofore stated.

Dated: February 15, 2022
New Rochelle, New York

Respectfully Submitted,

MIRIAM E. ROCAH

District Attorney of Westchester County
New Rochelle Branch
475 North Ave
New Rochelle, NY 10801
914-813-5800

By: ADA BRITTANY J. BURK

OFFICE OF THE DISTRICT ATTORNEY
WESTCHESTER COUNTY

MIRIAM E. ROCAH
DISTRICT ATTORNEY

WESTCHESTER COUNTY COURTHOUSE
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601
(914) 995-3414

AFFIDAVIT OF SERVICE
PEOPLE V GUSTAVO VILLAMARES SERRANO

STATE OF NEW YORK }
} ss.:
COUNTY OF WESTCHESTER }

BRITTANY BURK, being duly sworn, deposes and says that on **15TH DAY of FEBRUARY 2022**; (She) served **AFFIRMATION IN OPPOSITION** upon **Raneri, Light & O'Dell, PLLC, Attn: Dennis W. Lights, Esq,** by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed to the said attorney at, **150 Grand Street, Suite 502, White Plains, New York 10601** by depositing same in a Post Office Box regularly maintained by the United States Government, in the City of NEW ROCHELLE, NEW YORK.

Deponent further says that the said **ATTORNEY** is the attorney herein and the last address appearing from the last papers served on this office is SAME AS ABOVE.

Deponent is over the age of 18 years.

BRITTANY BURK
Assistant District Attorney
New Rochelle Branch

Sworn to before me this
15TH DAY of FEBRUARY 2022

JULISSA VEGA
NOTARY PUBLIC

JULISSA VEGA
Notary Public, State of New York
Registration #01VE5053367
Qualified in Westchester County
Commission Expires 12/18/25

☐ GREENBURGH BRANCH
188 Tarrytown Road
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☐ WHITE PLAINS BRANCH
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104 South Broadway
Yonkers, NY 10701
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EXHIBIT 7

EXHIBIT 7

CITY COURT OF THE CITY OF NEW ROCHELLE
STATE OF NEW YORK: COUNTY OF WESTCHESTER

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Docket No.: CR 5662-21

-against-

REPLY AFFIRMATION

GUSTAVO VILLAMARES SERRANO,

Defendant.

----------X

DENNIS W. LIGHT, ESQ., an attorney duly admitted and licensed to practice law before the courts of the State of New York hereby affirms, pursuant to CPLR §2106, and states, upon the penalty for perjury, as follows:

1. That I am a member of Raneri, Light & O'Dell, PLLC, the attorneys of record for the above-named Defendant;

2. That I am fully familiar with the hereinafter facts and circumstances by reason of a file maintained in my office;

3. That the statements that hereinafter follow are made upon personal knowledge unless alleged to be made on information and belief and as to those statements I believe them to be true;

4. That this affirmation is respectfully submitted in reply to the People's answering papers and in further support of the Defendant's instant application for an Order striking the People's Certificate of Compliance dated January 4, 2022, pursuant to Criminal Procedure Law §§ 30.30(5) and 245.50(4), on the grounds it is improper, illusory and, therefore, invalid based on People's non-compliance with their automatic discovery obligations pursuant to CPL § 245.20(1) and the 35-day time restrictions set forth in CPL § 245.10(1)(a)(ii), as amended.

Prosecution's Continuning Non-Compliance with Automatic Discovery

5. The Court is respectfully informed that the defense will begin responding to the People's opposition to the instant application by first addressing the opening argument under Point III that avers, in essence, "PO Nerney's valid and current certification certificate as required by CPL § 245.20(1)(s) … was served on defense on November 30, 2021 and labeled 'Nerney BAO.pdf' (see attached Exhibit)." See, People's Memorandum of Law by ADA Brittany J. Burk dated Feb. 15, 2022, Point III, p.22, par.1).

CITY COURT OF THE CITY OF NEW ROCHELLE
STATE OF NEW YORK: COUNTY OF WESTCHESTER

----------X

THE PEOPLE OF THE STATE OF NEW YORK, Docket No.: CR 5662-21

-against- REPLY AFFIRMATION

GUSTAVO VILLAMARES SERRANO,
Defendant.

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DENNIS W. LIGHT, ESQ., an attorney duly admitted and licensed to practice law before the courts of the State of New York hereby affirms, pursuant to CPLR §2106, and states, upon the penalty for perjury, as follows:

1. That I am a member of Raneri, Light & O'Dell, PLLC, the attorneys of record for the above-named Defendant;

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6. The People, however, did not attach such an exhibit to their answering papers as stated above but Defendant submits the prosecution's "NerneyBAO.pdf" document herewith as Exhibit "A" for the Court's information and review.

7. The NerneyBAO.pdf is copy of a DCJS Municipal Police Training Council certificate of completion for a breath test operator course conducted at the Westchester County Police Academy (see, Ex. "A").

8. The automatic discovery required by CPL § 245.20(1)(s), in part, orders the People, pursuant to CPL § 245.20(5), to disclose and produce "the certification certificate, if any, held by the operator of the machine or instrument," which document refers, not to a breath test operator course, rather for the disclosure and production of a New York State Department of Heath Breath Analysis Operator Permit that certifies its holder is state certified in operation of breath alcohol instrumentation.

9. The Defendant respectfully submits a redacted example of the aforesaid BAO Permit from an unrelated criminal case, which is the certification certificate required by CPL § 245.20(s) issued to a qualified breath analysis operator pursuant to 10 NYCRR 59.7 in this state (see, Exhibit "B").

10. It is respectfully submitted that the People's proffer of the aforementioned breath test operator course certificate is analogous to an individual holding a *juris doctor* diploma and touting it as evidence he or she is state certified to appear and represent clients in court.

11. A law school educated individual is no more authorized and permitted to represent clients in court unless and until they pass a bar exam and are licensed by the state, which is a circumstance similar to the issue herein.

12. A law enforcement officer is not be authorized and permitted to collect evidentiary breath–alcohol samples from subjects for use in a criminal proceeding unless and until they are licensed by the state's Department of Health, which is verification such person has been properly educated and trained in the operation of breath alcohol instrumentation.

13. By reason of the foregoing, the People remain non-compliant, in part, with CPL § 245.20(1)(s) as it relates to disclosure and production of the certification certificate, if any, held by the operator of the breath analysis machine or instrument herein.

14. Additionally, CPL § 245.20(1)(s), in part, orders the People, pursuant to CPL § 245.20(5), to disclose and produce "[i]n any prosecution alleging a violation of the vehicle and

traffic law, ... , all records of calibration, certification, inspection, repair or maintenance of machines and instruments utilized to perform any scientific tests and experiments, including but not limited to any test of a person's breath, blood, urine or saliva, for the period of six months prior and six months after such test was conducted, ***including the records of gas chromatography related to the certification of all reference standards*** ... (***our emphasis added***)."

15. Here, the prosecution avers its compliance with the aforesaid gas chromatography disclosure requirement by stating "these records were also provided to defendant on November 30, 2021 labeled 'SimSoln21170.pdf' (see Exhibit)." See, Burk Memo of Law, Point III, p.22, par.2).

16. The People, however, did not attach such an exhibit to their answering papers as stated above but Defendant submits the prosecution's "SimSoln21170.pdf" document herewith as Exhibit "C" for the Court's information and review.

17. A review of the prosecution's "SimSoln21170.pdf" document reveals it to be a business record, certified pursuant to CPLR § 4518, that Simulator Solution Lot Number 21170 was tested using headspace gas chromatography and been determined to contain the appropriate concentration of ethyl alcohol (see, Ex. "C").

18. The Defendant respectfully submits that the aforementioned document is a conclusion unsupported by disclosure and production of the court-ordered records of gas chromatography.

19. Pursuant to CPL § 245.20(1)(s), the People, in part, are ordered, pursuant to CPL § 245.20(5), to disclose and produce "all ... records of gas chromatography related to the certification of all reference standards," not just the certified business record attached hereto which constitutes nothing more than a conclusion (see, Ex. "C").

20. By example, the Defendant respectfully submits an example of gas chromatography records disclosed and produced by the People in an unrelated criminal case, which evidences the People's ability to access, disclose and produce such records for compliance with CPL § 245.20(s) (see, Exhibit "D").

21. The Defendant respectfully submits, that by reason of the foregoing, the People remain non-compliant, in part, with CPL § 245.20(1)(s) as it relates to disclosure and production

of records of gas chromatography related to certification of all reference standards, namely: Simulator Solution Lot Number 21170.

22. The balance of this affirmation shall respond to the People's remaining argument against the Court granting the relief sought herein as it relates to the prosecution's alleged non-compliance with CPL § 245.20(1)(k).

23. It is the People's position that their "ongoing efforts to fulfill their discovery obligations shows that they exercised due diligence and filed a certificate of compliance in good faith that was reasonable under the circumstances (see, Burk Memo of Law, Point IV, p.26, par.2)."

24. The People apparently are claiming that "due diligence and reasonable under the circumstances" is defined as substantial compliance with CPL Article 245 qualifies for good faith efforts without the need to seek extensions of time or protective orders.

25. When discoverable materials are, despite diligent, good faith efforts, not in the actual possession of the prosecution, the relevant time period for disclosure and production may be extended pursuant to CPL § 245.10(1)(a)(iv)(B) by motion as provided in CPL § 245.70(2).

26. Moreover, the People are not without a remedy when it is claimed certain items and materials are not discoverable although requested by the Defendant.

27. CPL § 245.70(1) provides that, "[u]pon a showing of good cause by either party, the court may at any time order that discovery or inspection of any kind of material or information under this article be denied, restricted, conditioned or deferred, or make such other order as is appropriate."

28. The People, in either situation, have not sought intervention from the Court to extend their time for compliance with automatic discovery, nor a protective order to deny, restrict, condition or defer the materials or information sought by Defendant.

29. Therefore, the People's position that substantial compliance with court-ordered automatic discovery constitutes due diligence and reasonable under the circumstances is misguided and not in unison with developing case law.

30. The Court is respectfully informed that, "upon a challenge to a certificate of compliance, the People must articulate their efforts to comply with CPL § 245.20(1) with respect to the statutory subsections or specific items of discovery at issue. If the People establish that they exercised due diligence and acted in good faith in filing their certificate, their certificate of

compliance shall be deems valid. This [due diligence standard] may be accomplished by recounting the steps they took to obtain certain materials or ascertain the existence thereof, explaining the reasons why particular items are outstanding, lost or destroyed, and submitting their good-faith arguments for why certain materials are not discoverable under the statute." People v. Georgiopoulos, 2021 NY MiscLEXIS 2122, 8-9, 2021 NY SlipOp 50380(U), 3 (Sup. Ct., Queens Co., Apr. 29, 2021); see also, People v. Salters, 2021 NY MiscLEXIS 4498, 2021 NY SlipOp 50800(U)(Dist. Ct., 1st Dist., Nassau Co., Aug. 20, 2021), People v. Knorr, 73 Misc3d 285, 152 NYS3d 556 (Justice Ct., Monroe Co., Aug. 16, 2021).

31. Here, in the context of "good faith" disclosure and production of impeachment information and materials for law enforcement officers, the People claim statutory compliance with their automatic discovery obligations under CPL § 245.20(1)(k)(iv) insofar as they relied on the information self-reported by Police Officers Marco and Baker, Police Officer Hearle's impeachment information was not previously available prior to filing of their certificate of compliance, and Police Officer Nerney updated his 1k form on February 9, 2022, but refused to answer question number 6 thereon (see, Burk Memo of Law, Point II, p.8, par.1).

32. The People further claim that impeachment information is not in their possession or control, and their efforts to obtain same include sending a Discovery Demand Letter to the department on commencement of the case, requesting updated 1(k) forms twice from Police Officer Nerney via email (see, Burk Memo of Law, Point II, p.8, par.1).

33. The Court is respectfully informed that, contrary to the People's instant assertion that law enforcement impeachment information is not in their possession and control, CPL § 245.20(2) expressly states that "all information related to the prosecution of a charge in the possession of any New York state or local police or law enforcement shall be deemed to be in the possession of the prosecution," which is dovetailed by CPL § 245.55(1) that dictates the "District Attorney and the assistant responsible for the case ... shall endeavor to ensure that a flow of information is maintained between the police and other investigative personnel and his or her office sufficient to place within his or her possession or control all material and information pertinent to the defendant and the offense or offenses charged" and, "[a]s a result, it is never sufficient for the People to affirm that [a potential police officer impeachment] item is not in their physical possession to defeat a certificate of compliance challenge." Georgiopoulos at 14-15, 2021 NY SlipOp at 5.

34. The Court is respectfully informed there is now Appellate authority holding that CPL § 245.20(1)(k) broadly requires disclosure of all impeachment evidence in criminal proceedings . See, Matter of Jayson C., 2021 NY AppDiv LEXIS 6865, 2021 NY SlipOp 06794 (1st Dept., Dec. 7, 2021).

35. It has also been recently held in a recent Article 78 proceeding that, in order to comply with CPL § 245.20(1)(k)(iv) – and while it is not up to a District Attorney to decide if a particular item may be admissible or may impeach a witness – all law enforcement personnel and employment records and substantiated or unsubstantiated complaints must be provided to the defense. See, Hudson Police Local 3979 v. Bower, 2021 NY MiscLEXIS 5997, 2021 NY SlipOp 21318 (Sup. Ct., Columbia Co., Nov. 24, 2021).

36. As previously indicated, *supra*, "CPL § 245.55(1) specifically obligates the People to ensure that a flow of information exists for 'any evidence or information discoverable under [CPL § 245.20(1)(k)]'." People v. Surgick, 2021 NY MiscLEXIS 5393, 7, 2021 NY SlipOp 51007(U), 3 (City Ct., Albany Co., (Oct. 15, 2021).

37. The aforesaid statute further provides "that each law enforcement agency 'shall make available to the prosecution a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant for compliance with this article .' CPL § 245.55(2)." Id. at 7-8, 2021 NY SlipOp at 3.

38. "Moreover, a law enforcement agency's personnel files, like all items and information related to the prosecution of a charge, are statutorily 'deemed to be in the possession of the prosecution.' CPL § 245.20(2)." Id.

39. "The plain language of this presumption along with the People's statutory obligations demonstrate, unequivocally, the legislative's intent: **the People's due diligence and reasonable inquiries burden is exceptionally high to obtain, review, and disclose impeachment material concerning their law enforcement witnesses."** Id. **(our emphasis added).**

40. The Court is respectfully reminded that CPL Article 245 dramatically increased a criminal defendant's right to meaningful discovery of impeachment materials excluding only exonerated or unfounded complaints. See, People v. Montgomery, 2022 NY MiscLEXIS 73, 2022 NY SlipOp 22009 (Sup. Ct., NY County, Jan. 12, 2022); see also, People v. Barralaga, 73 Misc3d 510, 515-6, 153 NYS3d 808, 813 (Crim. Ct., NY County, Sept. 10, 2021).

41. When the Legislature greatly reduced the confidentiality of law enforcement records by repealing Civil Rights Law § 50-a, "all information and evidence that 'tends to impeach the credibility of a testifying witness' must be disclosed to the defense (CPL § 245.20(1)(k)." Barralaga at 515, 153 NYS3d at 813.

42. The prosecution's statutory disclosure obligation under CPL § 245.20(1)(k), therefore, requires more than providing a 1k self-reporting questionnaire completed by testifying officers. See, Id., see also, People v. Kelly, 71 Misc3d 1202(A), 142 NYS3d 788 (Crim. Ct., NY County, Mar. 19, 2021) (the use of impeachment materials ultimately falls soundly in the trial court's discretion, however, the People must provide defense with all underlying materials for substantiated and unsubstantiated cases against officers); People v. Cooper, 2021 NY MiscLEXIS 678, 2021 NY SlipOp 21039 (County Ct., Erie Co., Feb. 23, 2021) (summaries of records will not suffice, the entire record, subject to statutorily approved redactions, must be provided to the defendant); Surgick, *supra*, at 11, 2021 NY SlipOp at 4 (1k questionnaires are insufficient).

43. Moreover, the prosecution's use of a self-reporting law enforcement 1k questionnaire form is, likewise, an insufficient disclosure procedure and not a good faith, diligent and reasonable inquiry into the existence of impeachment materials insofar as the People, pursuant to 22 NYCRR § 200.27, are under court order that confirms their disclosure obligations pursuant to Brady v. Maryland, 373 US 83 (1963), Giglio v. United States, 405 US ISO (1972), People v Geaslen, 54 NY2d 510 (1981), and their progeny, where the Administrative Judge's Model Order created in 2017 directs the prosecution should review, not only their internal files, but the files of law enforcement directly related to the prosecution or investigation of this case (see, Exhibit "E")

44. By reason of the People's foregoing collective disclosure deficiencies, the Defendant respectfully submits that the People have not satisfied their disclosure obligations pursuant to CPL § 245.20(1)(k)(iv) and, therefore, the People have not filed a valid and proper certificate of compliance as required by CPL § 245.50(1). See, CPL § 245.50(3).

45. "The [certificate of compliance] serves only one practical purpose: It is a necessary prerequisite to a valid statement of readiness under CPL § 30.30[, and, u]nless the court makes 'an individualized finding of special circumstances' the People 'shall not be deemed ready for trial until they have filed a proper certificate of compliance pursuant to' CPL §

245.50(1)." People v. Barnett, 68 Misc3d 1000, 1001, 129 NYS3d 293, 294 (Sup. Ct., NY County, July 20, 2020); see also, People v. Napolitano, 2020 NY MiscLEXIS 3182, 2020 NY SlipOp 50802(U) (Sup. Ct., NY County, June 11, 2020); People v. Benitez, 73 Misc3d 804, 155 NYS3d 751 (Sup. Ct., NY county, Oct. 28, 2021).

CONCLUSION

46. It is respectfully submitted that, by reason of all the foregoing facts, law and undisclosed automatic discovery information and materials, the People are non-compliant with their initial disclosure obligations as mandated by CPL § 245.20 and, therefore, the Certificate of Compliance dated January 4, 2022, was improperly filed and invalid.

WHEREFORE, the Defendant respectfully requests the Court grant the relief sought herein in its entirety and strike the People's Certificate of Compliance based on it being filed in bad faith, which finding deems illusory the People's statement of readiness for trial.

Dated: White Plains, New York
March 1, 2022

Respectfully submitted,

Dennis W. Light, Esq.

EXHIBIT "A"

State of New York

Division of Criminal Justice Services

Municipal Police Training Council

Hereby Acknowledges and Declares that

Niall J Nerney

has successfully completed the

Breath Analysis Operator Course

which satisfies the minimum
criteria established by the
Municipal Police Training Council
Westchester County Department of Public Safety Police Academy 48630181
Issue Date 12/12/2019

Expiration Date
12/12/2021

Robert S. Tallo
Chairman
Municipal Police Training Council

Michael R. Wood
Deputy Commissioner
Division of Criminal Justice Services

EXHIBIT "A"

State of New York

Division of Criminal Justice Services

Municipal Police Training Council

Hereby Acknowledges and Declares that

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which satisfies the minimum
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Municipal Police Training Council
Westchester County Department of Public Safety Police Academy 485901M
Issue Date 12/12/2019

Expiration Date
12/12/2021

Ronald G. Spike
Chairman
Municipal Police Training Council

Michael R. Wood
Deputy Commissioner
Division of Criminal Justice Services

EXHIBIT "C"

CERTIFIED COPY (CPLR RULE 4518)

0.10% SIMULATOR SOLUTION RECORD

Lot Number 21170, dated June 11, 2021

I, Jennifer F Limoges, Associate Director of Forensic Science, Forensic Investigation Center, do hereby certify and authenticate, as provided by Rule 4518, subdivisions a and e, Civil Practice Law and Rules, that the document annexed hereto is a true and accurate representation of an electronic record of the New York State Police Forensic Investigation Center which has been delegated to my possession, custody and control by the Superintendent of the New York State Police. This record, once created, is stored in an electronic format that cannot, thereafter, be altered or modified. This record was made in the regular course of business of the New York State Police Forensic Investigation Center, it is the regular course of the Forensic Investigation Center business to make such record, and such record was made at the time of each event recorded in it or within a reasonable time thereafter.

Digitally signed under ESRA by Jennifer F Limoges on 2021.06.10 10:58:06 -04'00'

Jennifer F Limoges

Associate Director of Forensic Science
Forensic Investigation Center

EXHIBIT "C"

NEW YORK STATE | State Police | Forensic Investigation Center

CERTIFIED COPY (CPLR RULE 4518)

0.10% SIMULATOR SOLUTION RECORD

Lot Number 21170, dated June 11, 2021

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Jennifer F Limoges

Digitally signed under ESRA by Jennifer F Limoges on 2021.06.18 10:55:08 -04'00'

Jennifer F Limoges

Associate Director of Forensic Science
Forensic Investigation Center

CERTIFIED COPY (CPLR RULE 4518)

0.10% SIMULATOR SOLUTION RECORD

Lot Number 21170, dated June 11, 2021

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Jennifer F Limoges

Digitally signed under ESRA by Jennifer F Limoges on 2021.06.18 10:55:08 -04'00'

Jennifer F Limoges

Associate Director of Forensic Science

Forensic Investigation Center

CERTIFIED COPY (CPLR RULE 4518)

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Digitally signed under ESRA by Jennifer F Limoges on 2021.06.18 10:55:08 -04'00'

Jennifer F Limoges

Associate Director of Forensic Science
Forensic Investigation Center

NEW YORK STATE | State Police | Forensic Investigation Center

ANDREW M. CUOMO
Governor

KEVIN P. BRUEN
Superintendent

DR. RAY A. WICKENHEISER
Director

0.10% SIMULATOR SOLUTION RECORD

Report Date:	**June 11, 2021**
Manufacturer:	**Guth Laboratories, Inc.**
Lot Number:	**21170**
Expiration Date:	**11/25/2021**
Analysis Results:	**122 mg Ethyl Alcohol / 100 mL of solution**

I, Carol S Miller, D-ABFT-FA, tested simulator solution lot number 21170 by headspace gas chromatography and have determined that it contains the appropriate concentration of ethyl alcohol. This solution is hereby approved for use.

When this simulator solution is used with a properly operating breath testing instrument, it will provide a value of 0.10% within acceptable limits.

I, Carol S Miller, D-ABFT-FA, made the entries contained in this record at the time of each event recorded, or within a reasonable time thereafter.

Performed by:

Digitally signed under ESRA by Carol S Miller on 2021.06.11 10:17:39 -04'00'

Carol S Miller, D-ABFT-FA
Forensic Scientist III
Breath Analysis Technical Supervisor/Operator #43419

Reviewed by:

Digitally signed under ESRA by Carrie A Kirkton on 2021.06.14 07:07:48 -04'00'

Carrie A Kirkton, D-ABFT-FA
Supervisor of Forensic Services
Breath Analysis Technical Supervisor

Building 30, 1220 Washington Avenue, Albany, NY 12226-3000 | (518) 457-1208 | www.troopers.ny.gov

EXHIBIT "D"

NEW YORK STATE | State Police | Forensic Investigation Center

ANDREW M. CUOMO
Governor
KEVIN P. BRUEN
Superintendent
DR. RAY A. WICKENHEISER
Director

0.10% SIMULATOR SOLUTION RECORD

Report Date:	**June 11, 2021**
Manufacturer:	**Guth Laboratories, Inc.**
Lot Number:	**21170**
Expiration Date:	**11/25/2021**
Analysis Results:	**122 mg Ethyl Alcohol / 100 mL of solution**

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Performed by:

Digitally signed under ESRA by Carol S Miller on 2021.06.11 10:17:39 -04'00'

Carol S Miller, D-ABFT-FA
Forensic Scientist III
Breath Analysis Technical Supervisor/Operator #43419

Reviewed by:

Digitally signed under ESRA by Carrie A Kirkton on 2021.06.14 07:07:48 -04'00'

Carrie A Kirkton, D-ABFT-FA
Supervisor of Forensic Services
Breath Analysis Technical Supervisor

Building 30, 1220 Washington Avenue, Albany, NY 12226-3000 | (518) 457-1208 | www.troopers.ny.gov

EXHIBIT "D"

Technical & Administrative Review Checklist - Simulator Solution

Client ID	Form Benzo Form 8b (Version 6)	Effective Date: December 11, 2018 Page: 1 of 1

Solution Lot Number: 1936-O

Review Start Date: 12/13/18

Reviewer (Initials): CAC

Documentation:

- ✓ Handwritten initials on all pages
- ✓ Page number on all pages, total pages noted
- ✓ Solution lot number on all solution pages; bottle number on all analytical pages
- ✓ Proper sample loading documented
- ✓ All pages of the technical record were reviewed for corrections; if applicable, corrections were documented appropriately
- ✓ Dates of analyses documented
- ✓ If abbreviations/symbols specific to the laboratory are used, they have been defined in section procedures
- N/A Any deviations from acceptability criteria have documented approval

Quality Control Data:

- ✓ Correct version of the test method is indicated on the QC Worksheet
- ✓ Required control samples analyzed, expiration dates not exceeded
- ✓ Acceptance criteria met
- ✓ QC results are accurately entered in Tox Form 11 QC Spreadsheet

Technical Data:

- ✓ The technical records demonstrate compliance with test methods
- ✓ Data transfers are accurate
- ✓ Retention times are recorded and acceptable
- ✓ Results meet acceptability criteria

Simulator Solution Record (electronic):

- ✓ Solution specific information is accurate (e.g. lot number, expiration date, etc)
- ✓ Results are accurately reported
- ✓ Electronic signature applied
- ✓ File name accurate

Review Completed:

- ✓ Upon review of the technical records available, I independently reached the same conclusion(s) reported.

Reviewer (initial/date): CAC 12/13/18

EXHIBIT "D"

New York State Police Crime Laboratory System BREATH TESTING	
Technical & Administrative Review Checklist - Simulator Solution	
Class: Form ID: Breath Form 4b (Version 6)	Effective Date: **December 11, 2018** Page: 1 of 1

Solution Lot Number: 18360 **Review Start Date:** 12/13/18

Reviewer (initials): CA

Documentation:

✓ Handwritten initials on all pages

✓ Page number on all pages, total pages noted

✓ Solution lot number on all solution pages; bottle number on all analytical pages

✓ Proper sample loading documented

✓ All pages of the technical record were reviewed for corrections; if applicable, corrections were documented appropriately

✓ Dates of analyses documented

✓ If abbreviations/symbols specific to the laboratory are used, they have been defined in section procedures

NA Any deviations from acceptability criteria have documented approval

Quality Control Data:

✓ Correct version of the test method is indicated on the QC Worksheet

✓ Required control samples analyzed, expiration dates not exceeded

✓ Acceptance criteria met

✓ QC results are accurately entered in Tox Form 11 QC Spreadsheet

Technical Data:

✓ The technical records demonstrate compliance with test methods

✓ Data transfers are accurate

✓ Retention times are recorded and acceptable

✓ Results meet acceptability criteria

Simulator Solution Record (electronic):

✓ Solution specific information is accurate (e.g. lot number, expiration date, etc)

✓ Results are accurately reported

✓ Electronic signature applied

✓ File name accurate

Review Completed:

✓ Upon review of the technical records available, I independently reached the same conclusion(s) reported.

Reviewer (initial/date): CA 12/13/18

Approved By: Associate Director of Forensic Science/Toxicology	Print Date: 12/13/2018

New York State Police Crime Laboratory System
BREATH TESTING
Simulator Solution Verification Results

Class: Form
ID: Breath Form 2 (Version 3)

Effective Date: June 1, 2015
Page: 1 of 1

Simulator Solution Level: 0.10 %

Target Concentration: 0.121 %
Acceptable Range: 0.117-0.125 %

Manufacturer: Guth Laboratories, Inc.
Lot Number: 18360

Analyst: Carol S Miller
Analysis Date: 12/11/2018

Bottle Number	% by wt	AVG
3	0.1207	0.1202
	0.1192	
	0.1207	
4	0.1208	0.1212
	0.1216	
	0.1212	
719	0.1218	0.1220
	0.1221	
	0.1220	
720	0.1216	0.1218
	0.1221	
	0.1218	
1446	0.1204	0.1209
	0.1212	
	0.1211	
1447	0.1222	0.1218
	0.1206	
	0.1226	
Grand Average		0.1213

29 1 of 57 C...

Approved By: Top Management

Print Date: 12/12/2018

New York State Police Crime Laboratory System
BREATH TESTING

Simulator Solution Verification QC Worksheet

Class: Form
ID: Breath Form 8 (Version 2)

Effective Date: January 10, 2017
Page: 1 of 1

Analysis Date: 12-11-18
Analyst Initials: CS

Breath Instr 2 Version 5

Simulator Solution Lot# B360

Expiration Date 05-24-19
Received Date 12-10-18
Level 0.10%
Bottle Number(s) 34, 719, 720, 1446, 1447

Internal Standard	**Lot #**	**Expiration Date**
n-propanol	AMC1017IR	01-17-19

Controls	**Lot #**	**Expiration Date**
0.08 % by wt	FNC417I701	05/12-022
0.10 % by wt	FNC417I802	04/2022
0.20 % by wt	FNC417I704	03/2022
0.30 % by wt	NA	NA
0.40 % by wt	NA	NA
0.50 % by wt	NA	NA
Composite	CSN101518	01-31-19

Instrumentation	**Instrument ID/Serial #**	**Calibration Exp Date**
Headspace GC	H_TX_HS2	01-17-19
Dilutor	MDIL-31-15-22	03-31-19

Test Method Analyst Review

Batch Accepted ✓ Batch Rejected ____

Rejection reason/course of action: ____

Deviations/departures: ____

Comments: ____

Initial/Date: CS 12-12-18

2 CS

Approved By: Top Management

Print Date: 12/11/2018

TotalChrom Sequence File C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Sequences\SimSoln.seq
Printed by : manager on: 12/11/2018 8:10:51 AM
Created by : toxicology on: 8/6/2009 1:12:05 PM
Edited by : manager on: 12/11/2018 8:10:48 AM
Number of Times Edited : 59
Description:

Sequence File Header Information:

Number of Rows	: 27
Instrument Type	: PE AutoSystem GC
Injection Type	: SINGLE
Raw tokens channel A	:
Result tokens channel A	:
Modified tokens channel A	:
Raw tokens channel B	:
Result tokens channel B	:
Modified tokens channel B	:

Sequence Sample Descriptions - Channel A

Row	Type	Name
1	Sample	COMPOSITE
2	Sample	0.08% CONTROL
3	Sample	0.10% CONTROL
4	Sample	NEG CONTROL
5	Sample	GUTH 18360 #3
6	Sample	GUTH 18360 #3
7	Sample	GUTH 18360 #3
8	Sample	GUTH 18360 #4
9	Sample	GUTH 18360 #4
10	Sample	GUTH 18360 #4
11	Sample	GUTH 18360 #719
12	Sample	GUTH 18360 #719
13	Sample	GUTH 18360 #719
14	Sample	0.10% CONTROL
15	Sample	NEG CONTROL
16	Sample	GUTH 18360 #720
17	Sample	GUTH 18360 #720
18	Sample	GUTH 18360 #720
19	Sample	GUTH 18360 #1446
20	Sample	GUTH 18360 #1446
21	Sample	GUTH 18360 #1446
22	Sample	GUTH 18360 #1447
23	Sample	GUTH 18360 #1447
24	Sample	GUTH 18360 #1447
25	Sample	0.10% CONTROL
26	Sample	0.20% CONTROL
27	Sample	NEG CONTROL

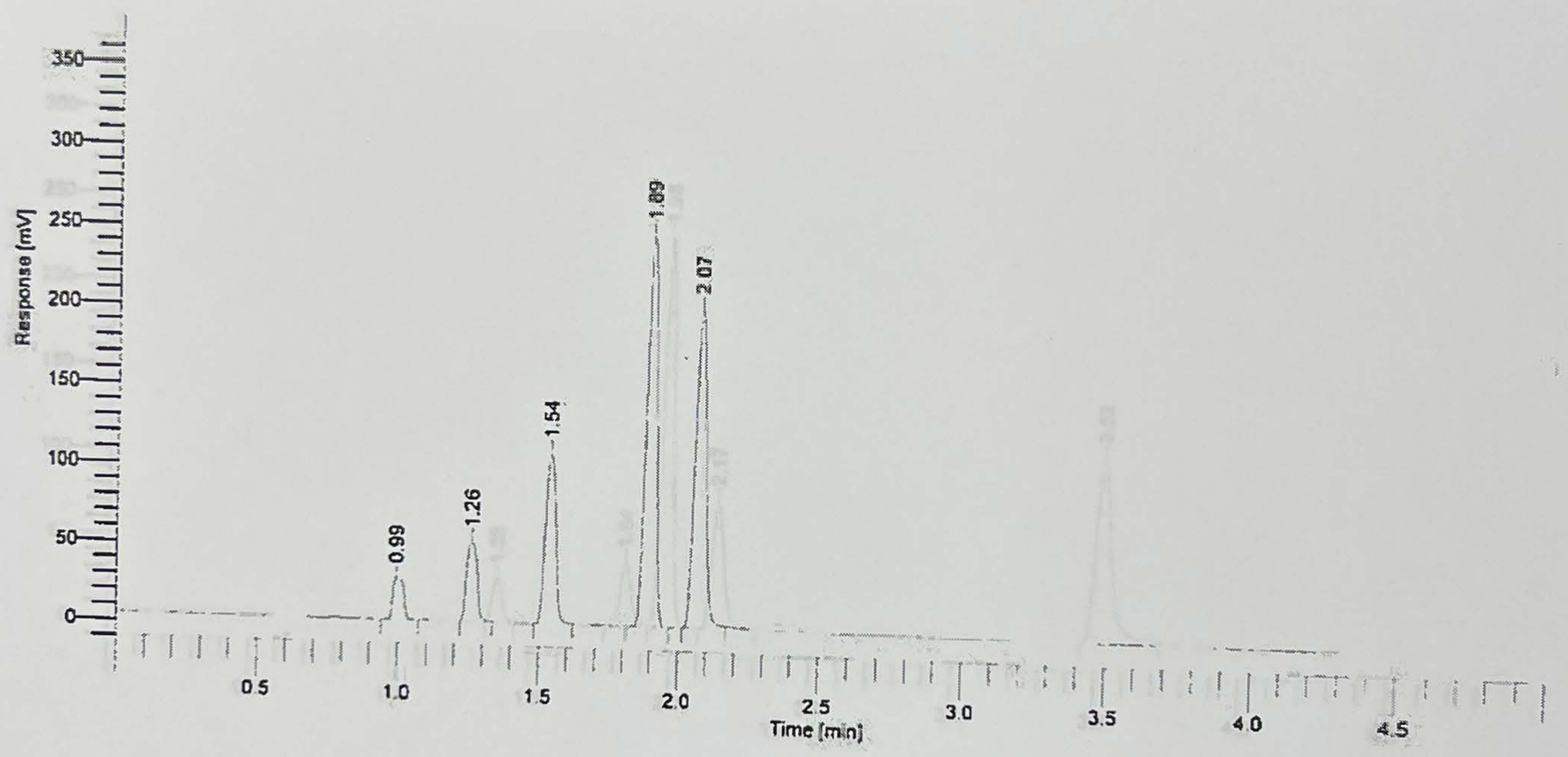
12-11-18

KM
12/11/18

3

Software Version	: 6.3.2.0646	Date	: 12/11/2018 9:44:58 AM
Reprocess Number	: d-2ua3120y7b: 47612		
Sample Name	: COMPOSITE		
Instrument Name	: GCHeadspace2	Data Acquisition Time	: 12/11/2018 9:40:33 AM
Rack/Vial	: 0/0	Channel	: A
Sample Amount	: 1.000000	Operator	: manager
Cycle	: 1	Dilution Factor	: 1.000000

Result File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Data\A20181211-001.rst
Sequence File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Sequences\SimSoln.seq



BLOOD ALCOHOL REPORT NYSP

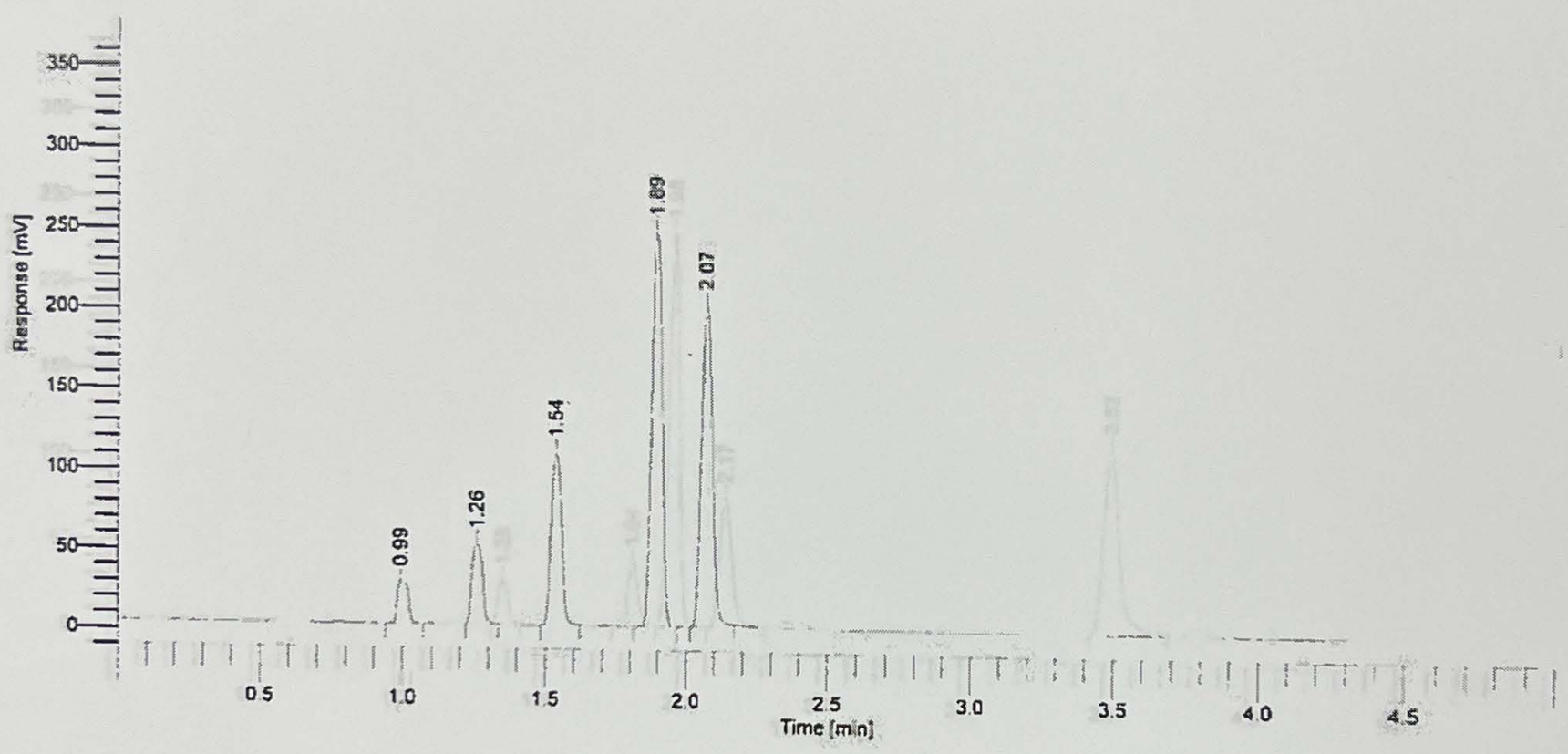
RESULTS FROM BAC1 COLUMN ON FID "A"

Component Name	% by Wt	Time [min]	Area [µV·s]
METHANOL	0.0784	0.99	67407.6
ETHANOL	0.0761	1.26	125681.3
ISOPROPANOL	0.0793	1.54	270448.9
ACETONE	0.0783	1.89	626807.3
N-PROPANOL		2.07	539348.6

4 Ohm

Software Version	: 6.3.2.0646	Date	: 12/11/2018 9:44:58 AM
Reprocess Number	: d-2ua3120y7b: 47612		
Sample Name	: COMPOSITE		
Instrument Name	: GCHeadspace2	Data Acquisition Time	: 12/11/2018 9:40:33 AM
Rack/Vial	: 0/0	Channel	: A
Sample Amount	: 1.000000	Operator	: manager
Cycle	: 1	Dilution Factor	: 1.000000

Result File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Data\A20181211-001.rst
Sequence File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Sequences\SimSoln.seq



BLOOD ALCOHOL REPORT NYSP

RESULTS FROM BAC1 COLUMN ON FID "A"

Component Name	% by Wt	Time [min]	Area [µV·s]
METHANOL	0.0784	0.99	67407.6
ETHANOL	0.0761	1.26	125681.3
ISOPROPANOL	0.0793	1.54	270448.9
ACETONE	0.0783	1.89	626807.3
N-PROPANOL	----------	2.07	539348.6

41 Cien

Software Version	: 6.3.2.0646	Date	: 12/11/2018 9:44:59 AM
Reprocess Number	: d-2ua3120y7b: 47613		
Sample Name	: COMPOSITE		
Instrument Name	: GCHeadspace2	Data Acquisition Time	: 12/11/2018 9:40:33 AM
Rack/Vial	: 0/0	Channel	: B
Sample Amount	: 1.000000	Operator	: manager
Cycle	: 1	Dilution Factor	: 1.000000

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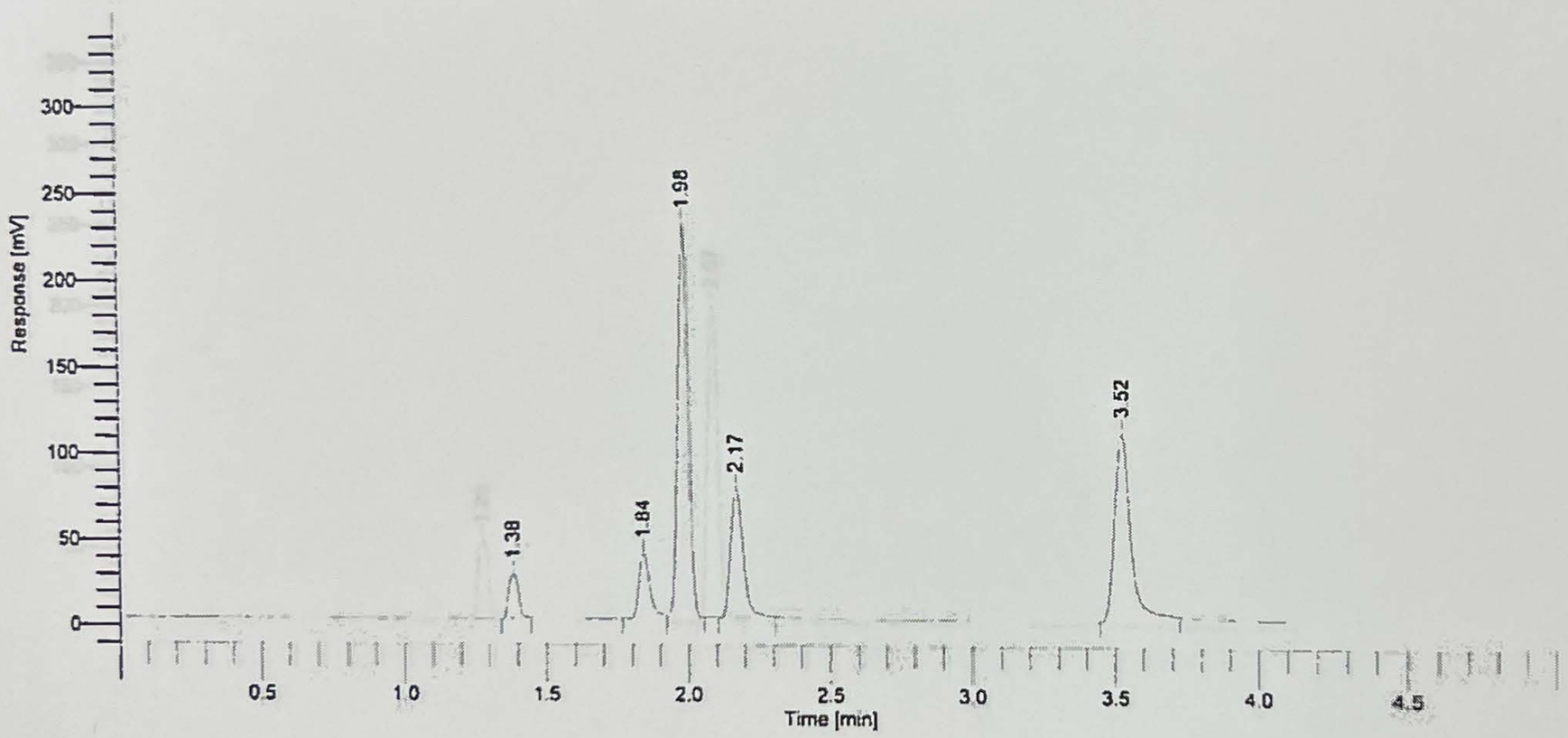
Sequence File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Sequences\SimSoln.seq



BLOOD ALCOHOL REPORT NYSP

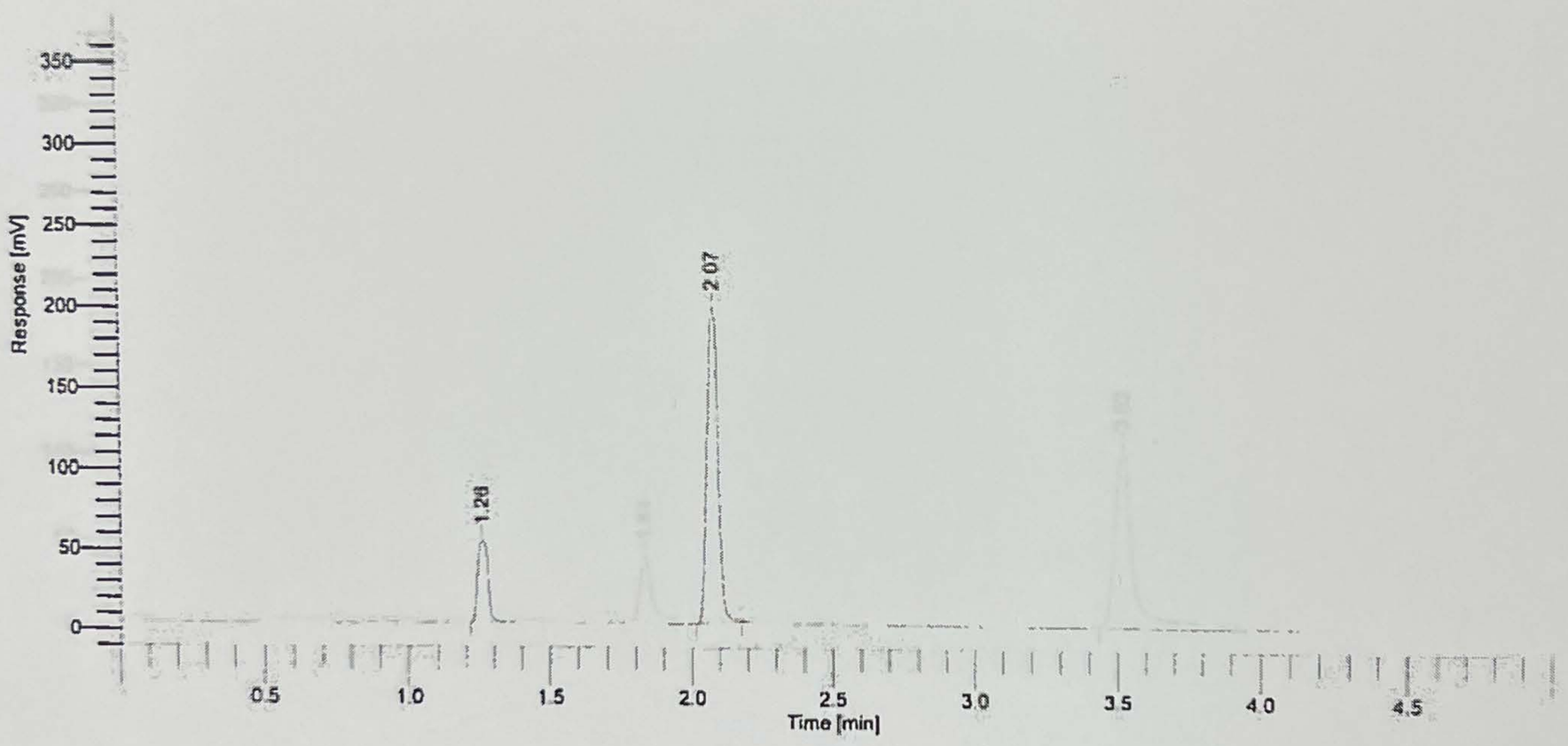
RESULTS FROM BAC2 COLUMN ON FID "B"

Component Name	Time [min]
METHANOL	1.38
ETHANOL	1.84
ACETONE	1.98
ISOPROPANOL	2.17
N-PROPANOL	3.52

Scan

Software Version	: 6.3.2.0646	Date	: 12/11/2018 9:49:58 AM
Reprocess Number	: d-2ua3120y7b: 47614		
Sample Name	: 0.08% CONTROL		
Instrument Name	: GCHeadspace2	Data Acquisition Time	: 12/11/2018 9:45:33 AM
Rack/Vial	: 0/0	Channel	: A
Sample Amount	: 1.000000	Operator	: manager
Cycle	: 2	Dilution Factor	: 1.000000

Result File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Data\A20181211-002.rst
Sequence File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Sequences\SimSoln.seq



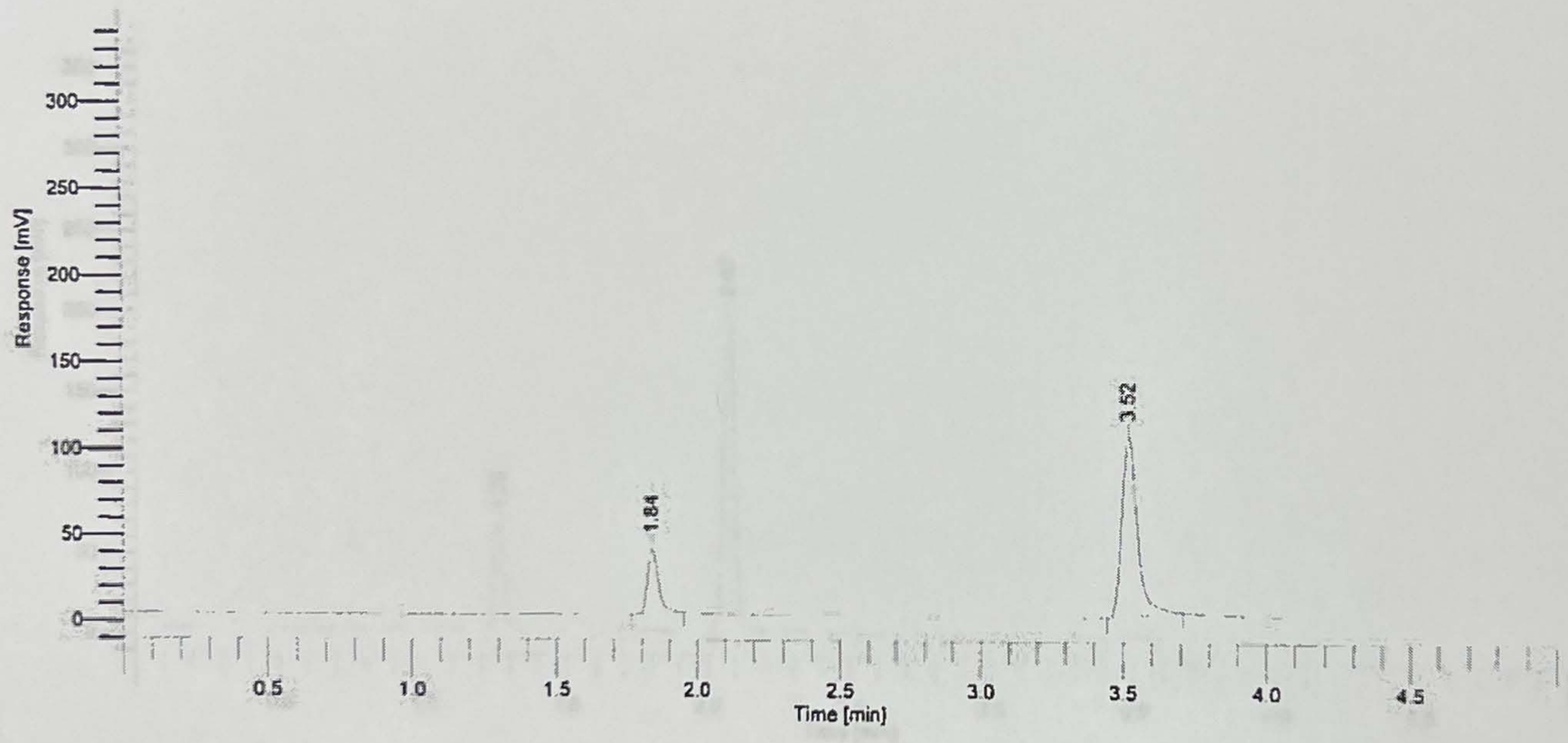
BLOOD ALCOHOL REPORT NYSP

RESULTS FROM BAC1 COLUMN ON FID "A"

Component Name	% by Wt	Time [min]	Area [µV·s]
METHANOL	0.0000	0.99	0.0
ETHANOL	0.0791	1.26	129151.1
ISOPROPANOL	0.0000	1.53	0.0
ACETONE	0.0000	1.89	0.0
N-PROPANOL	----------	2.07	532145.3

Software Version	: 6.3.2.0646	Date	: 12/11/2018 9:49:59 AM
Reprocess Number	: d-2ua3120y7b: 47615		
Sample Name	: 0.08% CONTROL		
Instrument Name	: GCHeadspace2	Data Acquisition Time	: 12/11/2018 9:45:33 AM
Rack/Vial	: 0/0	Channel	: B
Sample Amount	: 1.000000	Operator	: manager
Cycle	: 2	Dilution Factor	: 1.000000

Result File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Data\B20181211-002.rst
Sequence File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Sequences\SimSoln.seq



BLOOD ALCOHOL REPORT NYSP

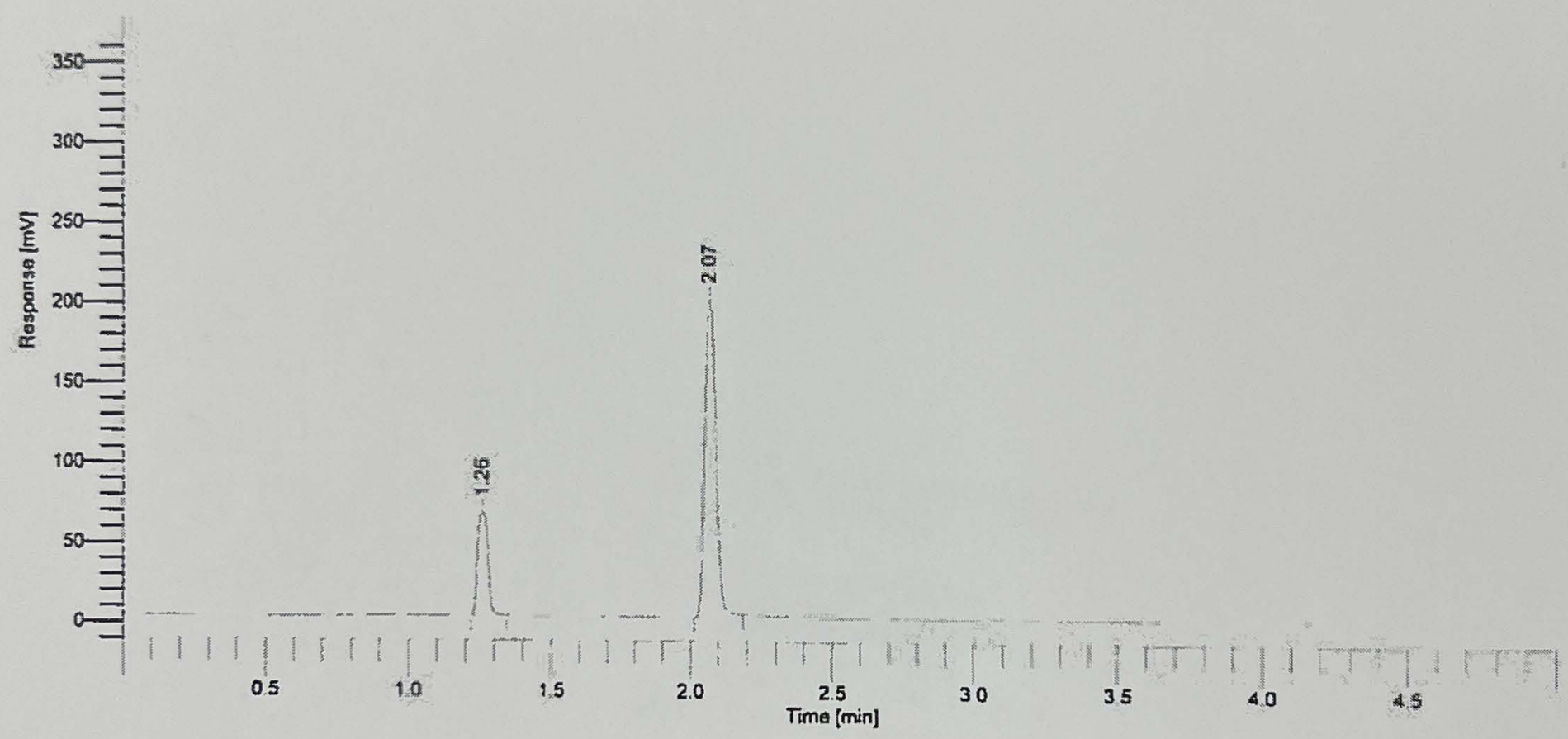
RESULTS FROM BAC2 COLUMN ON FID "B"

Component Name	Time [min]
ETHANOL	1.84
N-PROPANOL	3.52

76a

Software Version	: 6.3.2.0646	Date	: 12/11/2018 9:54:58 AM
Reprocess Number	: d-2ua3120y7b: 47616		
Sample Name	: 0.10% CONTROL		
Instrument Name	: GCHeadspace2	Data Acquisition Time	: 12/11/2018 9:50:33 AM
Rack/Vial	: 0/0	Channel	: A
Sample Amount	: 1.000000	Operator	: manager
Cycle	: 3	Dilution Factor	: 1.000000

Result File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Data\A20181211-003.rst
Sequence File : C:\PenExe1\TcWS\Ver6.3.2\GCHeadspace2\Sequences\SimSoln.seq



BLOOD ALCOHOL REPORT NYSP

RESULTS FROM BAC1 COLUMN ON FID "A"

Component Name	% by Wt	Time [min]	Area [µV·s]
METHANOL	0.0000	0.99	0.0
ETHANOL	0.0990	1.26	163810.1
ISOPROPANOL	0.0000	1.53	0.0
ACETONE	0.0000	1.89	0.0
N-PROPANOL		2.07	535240.9

EXHIBIT "B"