

EXHIBIT 7

EXHIBIT 8

EXHIBIT 4

EXHIBIT 5

EXH

EXHIBIT 6

CITY COURT OF THE CITY OF NEW ROCHELLE  
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MICHAEL MOLINA,  
Defendant.

Docket # CR-3495-21

DECISION AND ORDER

PHILIP J. MELLEA, A.D.A.  
Office of the District Attorney  
Westchester County  
New Rochelle Branch  
475 North Avenue  
New Rochelle, NY 10801

STEVEN EPSTEIN, ESQ.  
Barket Epstein Kearon Aldea  
& LoTurco, LLP  
666 Old Country Road, Suite 700  
Garden City, NY 11530  
Attorney for Defendant

Costa, J.:

The following papers were read on this motion:

Notice of Motion to Dismiss with Affirmation in Support and  
Exhibits A-B

Affirmation in Opposition and Memorandum of Law with  
Exhibits A-F

Reply Affirmation with Exhibit A

1-2, 3-4

5-6, 7-12

13, 14

In this criminal matter, the defendant Michael Molina is charged with violating: VTL 1192.3 Driving While Intoxicated; VTL 375(2)(a) No Headlights/Inclement; VTL 1128(a) Moved From Lane Unsafely; VTL 1163(a) Improper or Unsafe Turn Without Signal and VTL 1194(1)(b) Refusal To Take Breath Test. The defendant was arraigned on these charges on July 2, 2021. The defendant entered a plea of not guilty to all charges. The case was adjourned to July 27, 2021, for the People to provide discovery. The People provided some discovery to defendant's counsel via the Westchester District Attorney's Office discovery portal on July 8, 2021. On July 27, 2021, the case was adjourned to August 10, 2021, at the People's request to file a certificate of compliance.

On July 28, 2021, the People filed their certificate of compliance via the Westchester District Attorney's Office discovery portal and announced their readiness for trial.

On August 10, 2021, the People advised the Court, the defendant and the defendant's counsel on the record that the certificate of compliance was filed via their office's discovery portal and declared their readiness for trial. In response, defense counsel requested pre-trial hearings and stated that if an objection to certificate of compliance was found a motion would be filed on September 30, 2021, the date set for hearings.

On September 28, 2021, the defendant filed the instant motion seeking an order dismissing the accusatory instruments pursuant to CPL 30.30(1)(b) and 170.30(e) and the Sixth and Fourteenth Amendments of the United States Constitution. The defendant argues that the People were not ready for trial when they filed the certificate of compliance as they did not complete their discovery obligations under CPL 245.20. Specifically, the defendant asserts that it is undisputed that the People did not produce the disciplinary file of the arresting state trooper Angelo Trooper Fortune, which is required under CPL 245.20(1)(k)(iv), until November 10, 2021, as the trooper is a key prosecution witness. In the alternative, the defendant seeks an order from the Court invalidating the People's certificate of compliance and imposing sanctions against the People under CPL 245.80, for the People's discovery violations as the People have failed to offer an explanation for said violations in this case.

The People oppose the instant motion arguing that it is well within its time limits under CPL 30.30 and that only 26 days are chargeable to the People. The People also assert that they have exercised due diligence and that the certificate of compliance was filed in good faith. Moreover, the People argue that the defense has not been prejudiced by the delay in providing discoverable state police records as there have yet to have any adversarial proceeding in the case.

Although the papers submitted on this motion are filled with learned and interesting discussions of the interplay between CPL 30.30 and 245, especially with the newly developing

case law surrounding CPL 245, the Court, however, finds that it needs to look no further than the clear and unambiguous language of CPL 245 to address the defense's challenge to the People's certificate of compliance; the statutory interpretation is dispositive. Initial discovery is governed by CPL 245.20. The People's obligations are clearly stated in CPL 245.20(1):

the prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph and test, 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.

Moreover, CPL 245.20(1)(k) provides that

All evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case, that tends to: ... (iv) impeach the credibility of a testifying prosecution witness; ... Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information. The prosecutor shall disclose the information expeditiously upon its receipt and shall not delay disclosure if it is obtained earlier than the time period for disclosure in subdivision one of section 245.10 of this article.

In the instant case, at issue is when Trooper Fortune's disciplinary records should have been produced. As the summary of his disciplinary file indicates, the investigation on the most recent complaint against Trooper Fortune, on a case which also involved a refusal, was completed on or about December 16, 2020, and resulted in a finding of poor judgment, and for which the trooper was censured on January 7, 2021. Clearly, this information that was in possession of the state police when the defendant was arraigned on July 2, 2021; and therefore, pursuant to CPL 245.20(1)(k)(iv) the People were required to disclose this information as soon as practicable after the defendant's arraignment. Instead, disclosure of this information did not occur until November 10, 2021. Thus, the Court finds that the filing of the certificate of compliance on July 28, 2021, was clearly not in accordance with the CPL 245.20(1)(k)(iv).

When information that is discoverable is disclosed belatedly and in violation of Article 240, CPL 245.80(1) provides that the Court may impose an appropriate remedy or sanction for discovery violation(s) if the party entitled to discovery shows it was prejudiced. In pertinent part, CPL 245.80(2), provides that the Court may "preclude or strike a witness's testimony or a portion of a witness's testimony, admit or exclude evidence . . . ."

In this matter, defendant's counsel has shown under the totality of the circumstances that it was prejudiced when the People filed its certificate of compliance on July 28, 2021, when it did not provide pertinent information that tended to impeach the credibility of the prosecution's witness, Trooper Fortune. Accordingly, as the Court has found the People in violation of its discovery obligations, the Court pursuant to CPL 245.80 sanctions the People by the precluding the testimony of Trooper Fortune and by precluding the use of any evidence procured by Trooper Fortune in this matter.

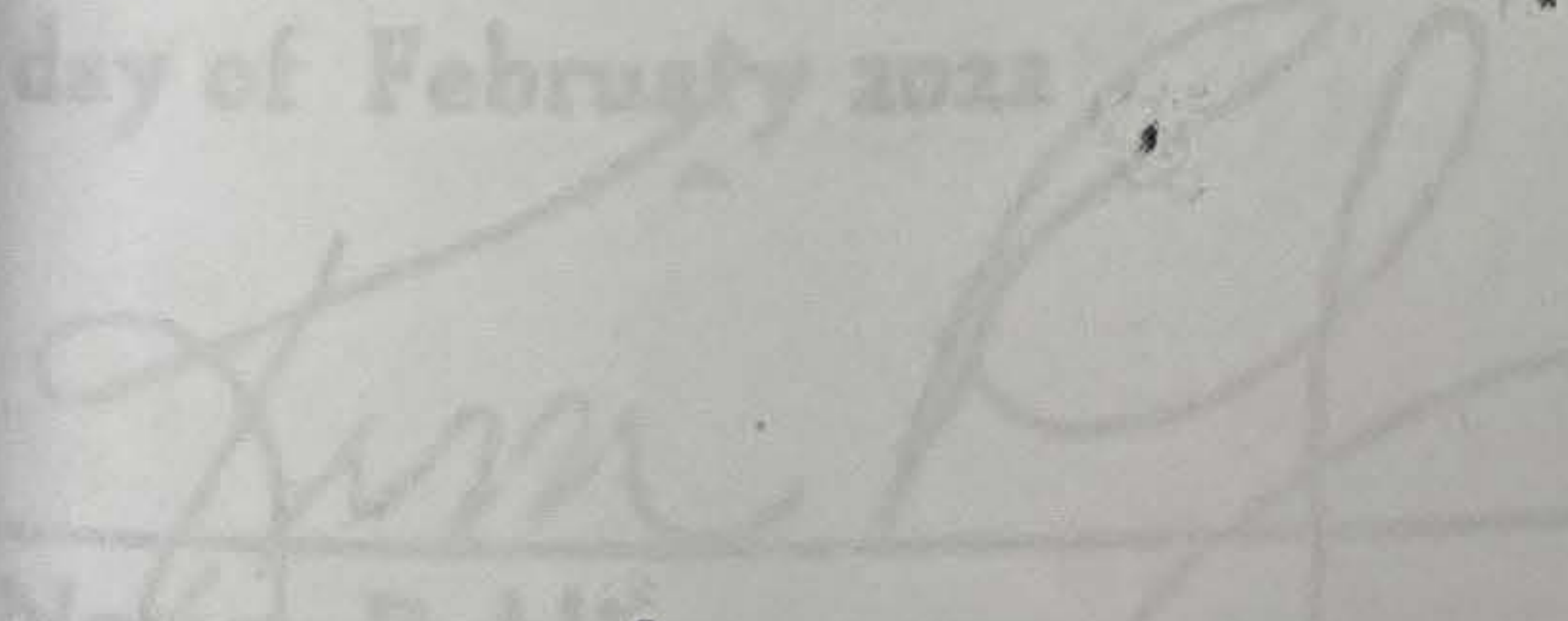
The parties are directed to appear January 25, 2022, at 9:30 a.m., for further proceedings.

The foregoing constitutes the decision and order of the court.

Dated: January 14, 2022  
New Rochelle, New York

  
\_\_\_\_\_  
MATTHEW J. COSTA, JUDGE

Sworn to before me this 20<sup>th</sup>  
day of February 2022

  
\_\_\_\_\_  
Notary Public  
KIM JEFFREY  
Notary Public, State of New York  
No. 01/E6304493  
Qualified in Westchester County  
Commission Expires May 17, 2022

STATE OF NEW YORK

COUNTY OF WESTCHESTER)

AFFIDAVIT OF SERVICE

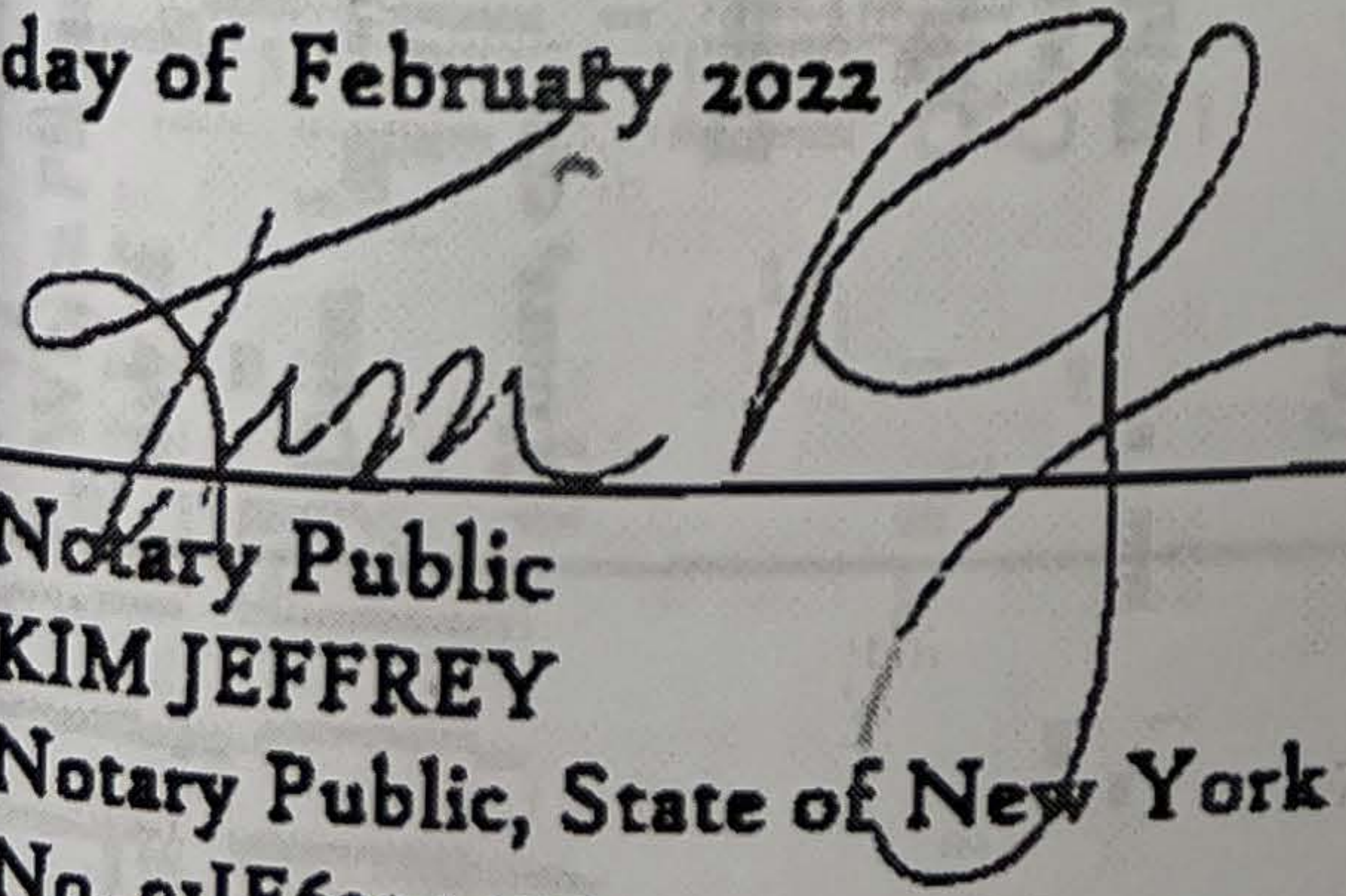
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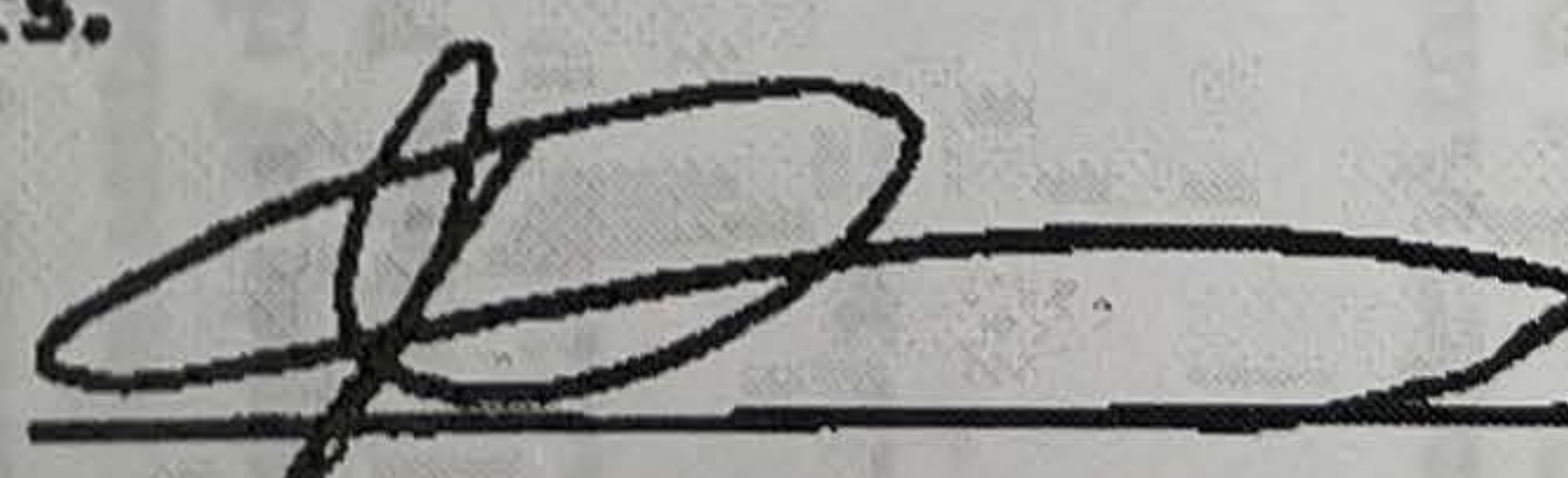
Deborah A. Trimarchi, being duly sworn, deposes and says that on the 22<sup>nd</sup> day of February 2022, she served one (1) copy of this NOTICE OF MOTION TO REARGUE PURSUANT TO CPLR 2221(d) WITH MEMORANDUM OF LAW AND EXHIBITS 1 THROUGH 4 upon: Steven Epstein, Esq., Barket Epstein Kearon Aldea & LoTurco, LLP, 666 Old Country Road, Suite 700, Garden City, New York 11530 by enclosing a true copy in a securely sealed postpaid wrapper and sending via UNITED PARCEL SERVICE overnight to the above-referenced address.

Deponent further states that the party named above is the attorney for the defendant herein, and their last known address, from papers served upon this Office, is as stated above.

Deponent is over the age of 18 years.

Sworn to before me this 22<sup>nd</sup>  
day of February 2022

  
Notary Public  
KIM JEFFREY  
Notary Public, State of New York  
No. 01JE6304495  
Qualified in Westchester County  
Commission Expires May 27, 2022

  
\_\_\_\_\_

SIR:

PLEASE TAKE NOTICE that the within is a true copy of an order duly entered in the County Clerk's Office, White Plains, Westchester County, New York on the day of \_\_\_\_\_, 2022.

Date:

Yours, etc.

District Attorney of Westchester County

Office and Post Office Address:  
Courthouse  
White Plains, N.Y.

To:

SIR:

PLEASE TAKE NOTICE that the within order will be presented for settlement and signature to the Hon....., one of the judges of the within named Court at the Courthouse, White Plains, N.Y. at 10 A.M. on the ..... day of ....., 20....

Dated ..... 20....

Yours, etc.

District Attorney of Westchester County  
Office and Post Office Address:  
Courthouse  
White Plains, N.Y.

To.....Esq.

CITY COUNTY OF WESTCHESTER: STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MICHAEL MOLINA,

Defendant.

New Rochelle City Court Docket No.: CR-3495-21

NOTICE OF MOTION TO REARGUE PURSUANT TO CPLR 2221(d) WITH MEMORANDUM OF LAW AND EXHIBITS 1 THROUGH 4

MIRIAM E. ROCAH  
District Attorney of Westchester County  
Office and Post Office Address:  
County Courthouse  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, New York 10601

To: Steven Epstein, Esq.