

COUNTY COURT : WESTCHESTER COUNTY
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

NOTICE OF MOTION

RECEIVED

-against-

Indictment No. 14-0450

SEP 03 2014

LACEY SPEARS,

**ROBERT A. NEARY
SUPREME COURT**

Defendant.

PLEASE TAKE NOTICE that upon the annexed affirmation of DAVID R. SACHS, ESQ., sworn to on the 28th day of August, 2014 and annexed Exhibits; and upon all the pleadings and papers filed heretofore had herein, the undersigned will move this Court to be held in and for the County of Westchester at a term thereof at the County Courthouse located at 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York on the 17th day of October, 2014, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order granting the following relief:

1. Dismissal: Pursuant to CPL 210.20(1)(a) and 210.25(1), dismissing the indictment on the ground that it is defective and that it does not substantially conform to the requirements of CPL Article 200.

2. Pursuant to CPL 210.20(1)(a), 210.25(1), (2), and/or 200.70(2)(a) and/or (b), dismissing the indictment upon the ground that the factual allegations made in the indictment demonstrate that it is defective on its face.

3. Grand Jury: Pursuant to CPL 210.30, providing that the court examine the stenographic Grand Jury minutes for the purpose of determining whether the evidence before the Grand Jury was legally sufficient to support the charges contained in the indictment.

4. Pursuant to CPL 210.20(1)(b) and 210.30, dismissing the indictment on the ground that the evidence before the Grand Jury was not legally sufficient to establish the offenses charged.

5. Pursuant to CPL 210.30, providing that the court examine the Grand Jury minutes and subsequently order dismissal of the indictment pursuant to CPL 210.20(1)(c) and 210.35, on the ground that the Grand Jury proceeding was defective.

6. Statement suppression—*Huntley* hearing: Pursuant to CPL 710.20(3) and 710.70(1), suppressing the use in evidence at trial of any record or potential testimony reciting or describing a statement of the Defendant made involuntarily, within the meaning of CPL 60.45, to a public servant engaged in law enforcement activity or to a person then acting under the direction of said public servant, or a hearing upon the issue pursuant to CPL 710.60(4).

7. Discovery: Discovery pursuant to CPL Article 240.

8. Brady: Delivery to the Defendant of all evidence favorable to the Defendant under the authority of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

9. Pursuant to CPL 240.43, requiring the prosecutor to disclose any past uncharged acts that will be used at trial to impeach the Defendant and a ruling from this Court precluding the District Attorney from offering such evidence at trial, or a hearing upon the issue.

10. Preclusion: Prohibiting the district attorney from presenting certain tangible evidence that was seized in this case pursuant to defective and unconstitutionally obtained search warrants.

11. Preclusion: Prohibiting the district attorney from offering at trial certain medical records, Facebook records and MySpace records.

12. Preclusion: Prohibiting the district attorney offering any expert testimony and argument at trial and from offering any documents/records of any kind regarding “Munchausen by Proxy” also known as “Factitious Disorder by Proxy”.

13. Transcripts of hearing: Pursuant to *People v. Sanders*, 31 N.Y.2d 463, 341 N.Y.S.2d 305, 293 N.E.2d 555 (1973), requiring that any hearings granted in this case be held at least twenty days prior to the commencement of the trial in order to allow sufficient time for the transcription of the minutes.

14. *Molineux*: Prohibiting the prosecution from presenting, in its direct case or on rebuttal, any evidence that the Defendant committed any other crime.

15. Subsequent Motions: Permitting the submission of subsequent motions.

16. Granting such other and further relief as this court deems just and proper.

Dated: August 28, 2014
White Plains, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David R. Sachs", written over a horizontal line.

DAVID R. SACHS, ESQ.
Riebling, Proto & Sachs, LLP
Attorneys for Defendant
One North Broadway, Suite 401
White Plains, New York 10601
(914) 946-4808

TO: DOREEN LLOYD
Assistant District Attorney
Westchester County District Attorney's Office
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COUNTY COURT : WESTCHESTER COUNTY
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 14-0450

AFFIRMATION IN SUPPORT

-against-

LACEY SPEARS,

Defendant.

DAVID R. SACHS, an attorney duly licensed in the State of New York, affirms the following under the penalties of perjury:

1. I am a member of the law firm of Riebling, Proto & Sachs, LLP, attorneys for the Defendant in the above-captioned matter.
2. I make this affirmation in support of the relief sought in the annexed Notice of Motion. The sources of the information and grounds for my belief reflected in this affirmation are conversations between myself and the Defendant, examination of the various papers filed in connection with this proceeding, examination of the discovery previously provided by the prosecution and my independent investigation of this matter.
3. The Defendant, Lacey Spears, was indicted by a Grand Jury of Westchester County on or about June 17, 2014 accusing her of committing the crimes of Murder in the Second Degree pursuant to Penal Law Section 125.25(4) and Manslaughter in the First Degree pursuant to Penal Law Section 125.20(1). A copy of the Indictment is annexed hereto as Exhibit "A".
4. The Defendant was thereafter arraigned and entered a plea of "not guilty" to said charges.

A. DISMISSAL OF INDICTMENT AS INSUFFICIENT ON ITS FACE

5. Pursuant to CPL Sections 210.20(1)(b), (c), 210.30, *et seq.*, the Indictment herein must be dismissed because it fails to contain plain and concise factual statements which assert facts supporting every element of the offense charged and the Defendant's commission thereof with sufficient precision as to clearly apprise the Defendant of the conduct that is the subject of the accusation.

6. The Indictment herein is couched solely in terms of ultimate conclusions of law and fact, and thus, fails to assert facts that support each and every element of the crimes charged, and accordingly, said Indictment must be dismissed.

7. The Indictment fails to substantially conform to the requirements set forth in CPL Article 200 and accordingly must be dismissed.

B. INSPECTION OF GRAND JURY MINUTES & DISMISSAL OF THE INDICTMENT AS DEFECTIVE

8. Defendant requests that the Court inspect the Grand Jury minutes that form the basis for the indictment in this case and that the Court disclose the minutes inspected and the Grand Jury testimony to defense counsel, pursuant to CPL 210.30(3), so that I might more effectively represent the Defendant on this motion to dismiss. A motion to inspect the Grand Jury Minutes should be granted as a matter of law Miranda v. Isseks, 41 AD2d 176. CPL 210.30(3) mandates the granting of a motion to inspect Grand Jury Minutes.

9. I also respectfully request to be advised by cover letter from the District Attorney's Office or from the Court as to the date when the Grand Jury minutes are provided to the Court.

10. Defendant requests that the Court examine the legal instructions to the Grand Jury. The Defendant further requests that the instructions to the Grand Jury be disclosed to defense counsel, pursuant to CPL 210.30(3), so that the accuracy and sufficiency of the

prosecutor's instructions to the Grand Jury might be evaluated and so that any appropriate motions might be made by the defense.

11. Upon information and belief, there is reason to believe that the evidence before the Grand Jury is not legally sufficient and competent to support the Indictment herein.

12. Upon information and belief, when the Assistant District Attorney presented this case to the Grand Jury, she did not charge the Grand Jury that the standard of proof necessary to indict is that the evidence before the Grand Jury must be such that if unexplained or uncontradicted would warrant a petit jury finding the Defendant guilty of each and every crime she is accused of having committed. Failure to so charge the Grand Jury constitutes substantive prejudicial denial of due process thus rendering the Grand Jury proceeding fatally defective.

13. It is axiomatic that an Assistant District Attorney presenting a case to a Grand Jury he or she has complete dominance and control over the Grand Jury proceedings and must exercise objective and impartial judgment and discretion in the presentation of the prosecution's case. *People v. DiFalco*, 44 NY2d 482. Upon information and belief, the Assistant District Attorney who presented this case so dominated and controlled the Grand Jury as to render the resultant Indictment fatally defective.

14. Upon information and belief the Assistant District Attorney who presented this case to the Grand Jury produced witnesses, many of whom, upon information and belief, have been convicted of one or more crimes and/or offenses and/or other acts of moral turpitude, which, if known to the Grand Jury would have totally diminished the credibility of those persons and that such information was knowingly and intentionally withheld from the Grand Jury.

15. An Assistant District Attorney presenting a case to the Grand Jury is required, where the evidence so indicates, to charge defenses, even affirmative defenses, to the Grand Jury. Upon information and belief, the Assistant District Attorney in this case did

not so charge the Grand Jury.

16. Defendant further moves to dismiss the Indictment on the ground that the Grand Jury proceedings were defective within the meaning of CPL Section 210.35 in that the same failed to conform to the requirements of Article 190 to such a degree that the integrity thereof was impaired and the Defendant prejudiced.

17. In particular, it is believed that the instructions before the Grand Jury were not legally proper, or for that matter, particular instructions enumerated below were not given at all in respect of:

- a. the burden of proof;
- b. the law of circumstantial evidence;
- c. Defendant's presumption of innocence.

18. Additionally, should it appear from review of the minutes that the People did not present evidence and proof that was legally sufficient to sustain the various charges of this Indictment, or that instructions were given to the Grand Jury were inaccurate or inadequate, then the Indictment herein should be dismissed pursuant to CPL Section 210.20(10)(b), (c).

19. It is further submitted that, although under certain circumstances an indictment is presumed to be valid on its face, this presumption does not arise until certain predicate facts are established. Thus, in the instance, certain facts must be disclosed by the District Attorney's Office, including, for example, the number of persons constituting the Grand Jury, the number of persons voting to indict, etc. Accordingly, the Defendant requests the Court to review the following:

- Whether the Indictment in its final form was drafted by the District Attorney's Office before the Grand Jury voted to return it;
- Whether the Indictment in its final form was exhibited or read verbatim to each of the Grand Jurors who voted to return it before the vote was taken;

- Whether an agent of the State or of the Federal government or any other person summarized testimonial evidence given before the Grand Jury in connection with the Indictment herein;
- Whether the Grand Jury was specifically advised, if the foregoing paragraph is applicable, that it was receiving summarized or hearsay evidence;
- Whether any of the Grand Jurors who voted to return the Indictment were not continuously present when all of the evidence underlying this Indictment was present;
- Whether a sufficient number of Grand Jurors were present each time when testimony or instructions were given.
- With respect to the above requests, the Defendant respectfully requests disclosure of the Grand Jury attendance records for each of the Grand Jurors during the time the present charges were being considered by the Grand Jury, specifically designating each member's attendance when all of the evidence was presented;
- Whether, and what, if any legal advice was given to the Grand Jury by the prosecution or the Court, including, but not limited to, the significance, legal effect, or evaluation of the evidence or testimony heard;
- Whether the entire Grand Jury process and proceedings were recorded, including the above referenced legal advice;
- Whether the prosecutor engaged in misconduct during questioning witnesses, such that the integrity of the Grand Jury was impaired.
- Whether the witnesses were properly sworn in and gave testimony under oath.
- Whether any witnesses under the age of nine testified and if so, whether there was a determination made as to the witness's competency.

20. In addition to the foregoing, upon information and belief, the prosecution improperly presented the case to another Grand Jury without Court approval. *CPL 190.75(3)*.

21. Moreover, the arrest of the Defendant was wholly without probable cause.

C. SUPPRESSION OF EVIDENCE

Statements

22. The Defendant moves to suppress from use, directly or indirectly, as evidence against the accused at trial, all statements, whether verbal or written, attributed to the accused that are not set forth in the CPL 710.30 notice served on the accused within 15 days of the arraignment on the accusatory instrument herein, on the grounds that there is no good cause for the late service of notice of any additional statements.

23. The Defendant has received notice pursuant to CPL 710.30 that the People intend to offer at trial evidence of statements made by the Defendant to law enforcement personnel.

24. Upon information and belief, and upon examination of the discovery previously provided in this matter, such statements were taken involuntarily or otherwise in violation of the rights of the accused under the New York and United States Constitutions.

25. Due to the improper conduct on the part of law enforcement officials, the alleged statements were:

a. taken involuntarily, within the meaning of CPL 60.45.

b. taken in violation of the right of the accused against self-incrimination.

c. taken in violation of the Defendant's right to counsel under the New York State and United States Constitutions.

d. taken without the effective assistance of counsel.

e. taken while the Defendant was detained without probable cause to arrest.

f. taken without adequately advising the Defendant of her "Miranda" rights prior to questioning.

g. taken in the absence of a knowing, voluntary, or intelligent waiver by the Defendant of her rights prior to questioning.

26. The fact that any alleged statements may have been made or given to law enforcement officers during an investigatory phase, even if spontaneous, does not relieve the government of its statutory burden. *People v. Chase*, 85 N.Y.2d 493, 499-500, 626 N.Y.S.2d 721, 650 N.E.2d 379 (1995).

Physical evidence

27. Upon information and belief, the People intend to offer at trial property seized from the residence of the Defendant located at 241 Hungry Hollow Road, Chestnut Ridge, New York 10977 by law enforcement personnel by order of Village of Chestnut Ridge Justice Court via Court Order and a Search Warrant which were based upon the Affidavit of Town of Ramapo Police Department Detective Kirk J. Budnick, sworn to on January 21, 2014. A copy of the Order, Search Warrant Affidavit and Inventory list are annexed hereto collectively as Exhibit "B".

28. Upon information and belief, the People intend to offer at trial property seized from the residence of the Defendant located at 241 Hungry Hollow Road, Chestnut Ridge, New York 10977 by law enforcement personnel by order of the Village of Chestnut Ridge Justice Court via Court Order and a Search Warrant which were based upon the Affidavit of Town of Ramapo Police Department Detective Kirk J. Budnick,

sworn to on January 23, 2014. A copy of the Order, Search Warrant Affidavit and Inventory list are annexed hereto collectively as Exhibit "C".

29. Upon information and belief, the People intend to offer at trial property seized from the hotel room of the Defendant located at Comfort Inn and Suites, Room Number 129 located at 20 Saw Mill River Road, Hawthorne, New York 10532 by law enforcement personnel by order of the Town of Mount Pleasant Justice Court via Court Order and a Search Warrant which were based upon the Affidavit of Westchester County Police Department Detective Daniel Carfi sworn to on January 25, 2014. A copy of the Order, Search Warrant Affidavit and Return of Order are annexed hereto collectively as Exhibit "D".

30. Upon information and belief, the People intend to offer at trial property and information seized from FACEBOOK, located at 335 Madison Avenue, New York, New York specifically relating to the profile [HTTPS:WWW.FACEBOOK.COM?HIPYHAPPYMOMMA](https://www.facebook.com/HIPPYHAPPYMOMMA) and all other associated Facebook profiles by law enforcement personnel by order of this Court via Court Order and a Search Warrant which were based upon the Affidavit of Westchester County Police Department Detective Daniel Carfi sworn to on March 3, 2014. A copy of the Order, Search Warrant Affidavit and Return of Order are annexed hereto collectively as Exhibit "E".

31. Upon information and belief, all property seized pursuant to the aforementioned warrants (Exhibits "B", "C", "D" and "E") was obtained in violation of the Fourth Amendment of the United States Constitution and Constitution and laws of New York.

32. More particularly, the evidence was obtained unlawfully because:

- a. The warrants under which the property was seized were issued without probable cause.

b. the affidavits or sworn testimony on which the warrants were issued contained material and false allegations that were made knowingly and in reckless disregard for the truth.

c. the warrants under which the property was seized fail to describe the place to be searched with sufficient particularity.

d. the warrants under which the property was seized fail to describe the things to be seized with sufficient particularity.

e. the warrants under which the property was seized was overly broad with regard to the property authorized to be seized.

f. the warrants under which the property was seized was executed beyond their authorized scope.

g. the warrants fail to contain a direction that the warrants be returned to the Court without regard to whether any property is seized as a result of the searches pursuant to CPL 690.45(8).

h. the warrants under which the property was seized were executed without giving proper notice of the executing officer's purpose and authority and in the absence of any "no knock" authorization.

i. the warrants fail to contain a direction that the warrants be returned to the Court without regard to whether any property is seized as a result of the search pursuant to CPL 690.45(8).

33. Upon information and belief, the People intend to offer at trial property seized from an Apple I-Phone model A-1387 having serial number FCC ID BCGE2430A/IC: 579C-E2430A and telephone number 256-476-3013, an Apple I-Pad computer model A-1219 having serial number D4048ZJ0Z38 and a Dell Inspiron laptop computer model P10F having serial number 78G5XM1-15748356457 by law enforcement personnel by order of the Town of Mount Pleasant Justice Court via Court Order and a Search Warrant which were based upon the UNSWORN Affidavit of Westchester County Police

Department Detective Daniel Carfi dated January 27, 2014. A copy of the Order, Search Warrant Affidavit and Return of Order are annexed hereto collectively as Exhibit "F".

34. Upon information and belief, the People intend to offer at trial property seized from Verizon Wireless by law enforcement personnel by order of the Town of Mount Pleasant Justice Court via Court Order and a Search Warrant which were based upon the UNSWORN Affidavit of Westchester County Police Department Detective Daniel Carfi dated February 10, 2014. A copy of the Order, purported Search Warrant Affidavit and Return of Order are annexed hereto collectively as Exhibit "G".

35. Upon information and belief, the People intend to offer at trial property seized from Verizon Wireless by law enforcement personnel by order of the Town of Mount Pleasant Justice Court via Court Order and a Search Warrant which were based upon the UNSWORN Affidavit of Westchester County Police Department Detective Daniel Carfi dated April 7, 2014. A copy of the Order, purported Search Warrant Affidavit and Return of Order are annexed hereto collectively as Exhibit "H".

36. With respect to the aforementioned warrants, Exhibits "F", "G" and "H", the warrants are defective as these purported affidavits of Westchester County Police Department Detective Daniel Carfi are unsworn. In New York, there is a statutory requirement that warrants be sworn to (CPL 690.35(1); *People v. Hicks*, 68 NY2d 234 (1986)). Here, the purported affidavits of Detective Carfi dated January 27, 2014, February 10, 2014 and April 7, 2014 merely contain the signature of the Hon. Nicolas C. Maselli below the signature of Detective Carfi. As a result, there is no written indication whatsoever on the signature pages of the purported affidavits that Detective Carfi's signature was sworn to as is required by CPL 690.35(1). Accordingly, the aforementioned warrants are defective and any property seized pursuant to these warrants was obtained unlawfully and must be suppressed.

37. In addition, with respect to the aforementioned warrants (Exhibits "F", "G" and "H"), the evidence was obtained unlawfully because:

a. The warrants under which the property was seized was issued without probable cause.

b. the affidavits or sworn testimony on which the warrants were issued contained material and false allegations that were made knowingly and in reckless disregard for the truth.

c. the warrants under which the property was seized fail to describe the place to be searched with sufficient particularity.

d. the warrants under which the property was seized fail to describe the things to be seized with sufficient particularity.

e. the warrants under which the property was seized was overly broad with regard to the property authorized to be seized.

f. the warrants under which the property was seized was executed beyond their authorized scope.

g. the warrants fail to contain a direction that the warrants be returned to the Court without regard to whether any property is seized as a result of the searches pursuant to CPL 690.45(8).

h. the warrants under which the property was seized were executed without giving proper notice of the executing officer's purpose and authority and in the absence of any "no knock" authorization.

i. the warrants fail to contain a direction that the warrants be returned to the Court without regard to whether any property is seized as a result of the search pursuant to CPL 690.45(8).

38. The grounds for the beliefs in the foregoing paragraphs, "27" through "37", are conversations with my client, my investigation of this matter and an examination of the alleged facts as set forth in the purported Affidavits of Town of Ramapo Police

Department Detective Kirk J. Budnick, dated January 21, 2014 and January 23, 2014 and the purported Affidavits of Westchester County Police Department Detective Daniel Carfi dated January 27, 2014, February 10, 2014, March 3, 2014 and April 7, 2014 which were all submitted in conjunction with applications for the aforementioned search warrants (Exhibits "B", "C", "D", "E", "F", "G" and "H").

D. SANDOVAL

39. Pursuant to *People v. Sandoval*, 34 N.Y.2d 371, 357 N.Y.S.2d 849, 314 N.E.2d 413 (1974), the Defendant requests that the People be precluded from asking any questions concerning Defendant's arrest record, conviction record, or any prior immoral, vicious, or other bad acts. The presentation of such information to the jury in this case would greatly prejudice the Defendant, far outweighing any probative value such information might have. The Defendant requests a hearing as to any such evidence the prosecution seeks to introduce at trial.

40. Pursuant to CPL 160.40, your affirmant requests that the Court provide Defendant with a copy of Defendant's Division of Criminal Justice Services report to enable Defendant to prepare for a *Sandoval* hearing.

E. VENTIMIGLIA

41. The defense is unaware of whether the People intend to introduce any evidence of alleged prior bad acts or charged or uncharged criminal conduct by the Defendant as evidence in chief under a claimed exception to *People v. Molineux*, 168 NY2d 264.

42. In *People v. Ventimiglia*, 52 NY2d 350, the Court of Appeals held that when a prosecutor seeks to offer uncharged crimes into evidence, it is best to request a prior ruling rather than wait until an objection is made before the jury.

43. Accordingly, the defense hereby makes application for a ruling to preclude any charged or uncharged crimes on the People's direct case should the People seek to introduce.

44. Proof or even implication of uncharged bad acts is so potentially harmful and prejudicial that such proof should not be permitted absent prior judicial determination as to each and every such item individually, whether such allegation of probative value is outweighed by its prejudicial impact. Ventimiglia, Supra; People v. Santarelli, 49 NY2d 241. A ruling as to uncharged bad acts in advance of trial is greatly preferable to exposing such matters to a jury and then relying on curative instruction. Ventimiglia, Supra; People v. Lindo, 85 AD2d 643.

45. It is therefore respectfully requested that the People be directed to state whether they intend to introduce any charged or uncharged crimes in their case, under Molineux, Supra, and if so, it is respectfully requested that this Court hold a hearing to determine the admissibility of these charged or uncharged crimes in accordance with Ventimiglia, Supra.

F. HEARINGS

46. Should the Court not grant any of the relief requested above at the time these motions are argued, I request that the Court schedule hearings relating to the same so that the Defendant may have an opportunity to produce evidence in support of the relief requested.

47. More specifically, the Defendant requests the following hearings:

a. Huntley

b. Sandoval

c. Ventimiglia/Molineaux

d. Probable cause (relating to Defendant's arrest)

e. Discovery

48. Pursuant to People v. Sanders, 31 N.Y.2d 463, 341 N.Y.S.2d 305, 293 N.E.2d 555 (1973), I request that any hearing ordered and had in this case, with the exception of a *Sandoval* hearing, be held at least twenty (20) days prior to the commencement of trial in order to allow sufficient time for the transcription of the minutes of such hearings.

G. DISCOVERY AND INSPECTION

49. Pursuant to CPL 240.40 the Defendant requests that the Court direct the People to provide the Defendant with the following property which is, or with the exercise of due diligence could come, within the possession or control of the prosecutor:

50. Any written, recorded or oral or observed statement of the Defendant (and of any coDefendant or co-conspirator, whether charged or not), including all notes, summaries, or memoranda concerning such statements made by any law enforcement agent or by any person acting under the direction of, or in cooperation with any law enforcement agent;

51. Any transcript of testimony relating to the criminal action or pending against the Defendant, given by the Defendant, or any agent or employee of the Defendant (or by any coDefendant whether charged or not) before any Grand Jury;

52. Any statement by any coDefendant or co-conspirator whether or not the prosecutor intends to introduce the same at trial;

53. All statements of witnesses and/or any notes concerning such statements made by any law enforcement officer;

54. If the Defendant was viewed or observed by any witness other than a law enforcement officer at any stage of the proceedings, the name and address of the witness and the circumstances under which the observations took place;

55. Names and addresses of all witnesses (including government employees, agents, or informants) to any events which form the basis for these charges;

56. Names of all law enforcement personnel present when the accused was taken into custody;

57. Names of all law enforcement personnel present when any statement attributed to the Defendant was made or recorded;

58. Names of all law enforcement personnel present at any search performed in connection with this case;

59. Any photograph or drawing relating to the criminal proceeding taken or made by a public servant engaged in law enforcement activity or by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial;

60. Any photograph or drawing purporting to contain the likeness of a human being that was shown to prospective witnesses or made with the participation of any witness (including the names of all persons participating in the preparation of such sketches or compositions, the names and addresses of all persons to whom the photographs or drawings were exhibited, as well as any documents that reflect the date, time, circumstances and result of such exhibition including any questions asked or statements made at any such preparation or exhibition);

61. Any photograph, photocopy, or other reproduction made by or at the direction of a police officer, peace officer or prosecutor of any property prior to its release pursuant to the provisions of Penal Law §450.10, regardless of whether the People intend to introduce at trial the property, or the photograph, photocopy or other reproduction;

62. Any audio or video tapes or other electronic recordings made of the Defendant by police officials, including the name of the person who made the recording;

63. Any tapes or other electronic recordings that the prosecutor intends to introduce at trial regardless of whether such recording was made during the course of the criminal transaction;

64. Copies of all documents, police reports, notes, or memoranda, prepared or maintained by police officials containing information relating to this matter including but not limited to:

- a. copies of all search and/or arrest warrants, together with all supporting affidavits and any other documents in support of any warrant that resulted in the arrest of the Defendant or the seizure of any property in this case;
- b. any documents reflecting by whom, the exact date, time, location and manner in which the events underlying the charged offense were reported to the police;
- c. tape recordings, complaint logs, and transcripts relating to any "911" call or call to the police relating to the crime charged;
- d. tape recordings, dispatcher logs, transcripts or memoranda recording any police communications during the investigation of the crime charged;
- e. any notes made by police officials concerning their investigation, whether to be used at trial or not;
- f. any Grand Jury referral forms;
- g. any portion of any police department manual, directive, or policy statement governing the police conduct of this investigation in any respect;

65. An itemized description of any property recovered or seized during the investigation of the charges, the person or place from which the property was taken, the person effecting such seizure or receiving the property, the date or dates the property was seized or recovered, and whether such seizure was pursuant to a warrant;

66. Any physical evidence recovered or seized from the Defendant or any coDefendant whether charged or not (including blood, breath, hair, or other samples) as well as any records or documents relating to any test or analysis performed on the physical evidence or sample seized;

67. The name and field of expertise of each person that the People intend to call at trial as an expert witness, as well as:

- a. the field and subject matter of the expert's expected testimony;

- b. a copy of the resume or curriculum vitae of the expert;
- c. for each scientific examination or test performed, the name, author, and chapter of any reference manual or authoritative text referred to or relied upon;
- d. if this expert has previously testified for the People the date, case name, Court, indictment or docket number of the case in which the expert testified, as well as copies of any transcripts of that testimony.

68. Defense counsel requests this information so that counsel might effectively represent the Defendant. Reference manuals or scientific texts referred to by any expert in reaching the conclusions to which they will testify must be examined prior to trial so that the defense may have an opportunity to explore the authoritativeness of such texts, and raise appropriate objections at trial to testimony that is based on hearsay;

69. Disclosure of the criminal record of the Defendant within the possession or control of the prosecution;

70. Any written report, oral report, document (including "lab notes," sketches, charts, computations, memoranda, audio or video tape, photograph, or other recording, whether included in whole or in part in any "report") or portion thereof, concerning a physical or mental examination, or scientific test or experiment, relating to this case that are, or with the exercise of due diligence could come, within the possession or control of the People, including but not limited to what is described in paragraphs 23-30;

71. All information, in whatever form concerning any scientific tests or mental or physical examinations as to which no written report or document exists;

72. All information, in whatever form, concerning any scientific tests or mental or physical examinations performed on the Defendant or on blood, breath, hair, tissue, clothing, or other items or samples seized from the Defendant;

73. Documents concerning any chemical testing or analysis associated with this case, including all records or notes relating to:

- a. the type, quality, or quantity of the substance analyzed;
- b. the preparation and calibration of any analytical instruments used;
- c. the preparation, synthesis, or analysis of any solutions, reagents or other chemicals utilized in the chemical analysis;
- d. the preparation, synthesis, or analysis of any chemical substances used as a standard, control or reference solution in the chemical analysis;
- e. the steps followed in performing any chemical analysis;
- f. the number of times each analysis was performed and the results observed or recorded for each;
- g. the output, in whatever form, of any instruments used to perform or assist in each analysis;
- h. any mathematical computations utilized;

74. All documents containing observations made during any autopsy performed in relation to this case;

75. All documents concerning any microanalysis or other scientific test associated with the post-mortem examination, including photographs, microscopic slides, or notes of observations;

76. All documents concerning any toxicological analysis associated with the post-mortem examination, including all records or notes relating to:

- a. the preparation and calibration of any analytical instruments used;
- b. the preparation, synthesis, or analysis of any solutions, reagents or other chemicals utilized in the toxicological analysis;
- c. the preparation, synthesis, or analysis of any chemical substances used as a standard, control or reference solution in the toxicological analysis;

- d. the steps followed in performing any toxicological analysis;
- e. the number of times each analysis was performed and the results observed or recorded for each;
- f. the output, in whatever form, of any instruments used to perform or assist in each analysis;
- g. any mathematical computations utilized;

77. All documents concerning any latent fingerprints, lifts, photographic reproductions or enlargements of lifts, any inked or "known" prints used for comparison purposes, and all documents concerning any comparison methods used, together with all notes, diagrams, or other memoranda made or used in an effort to correlate persons with objects or places connected or thought to be connected with the crime charged.

78. CPL 240.20(2) specifically requires disclosure of the items requested above relating to scientific or physical examination or tests. The People can articulate no prejudice to them in allowing the defense adequate discovery of scientific data and procedures. Any refusal to provide such information can only be for the purpose of retaining some perceived tactical advantage, at the expense of the defense.

79. I request that this information and data be disclosed so that I might have an opportunity to have independent tests performed, a step that is essential to my representation of the Defendant.

80. Pursuant to CPL 240.43, People v. Betts, 70 N.Y.2d 289, 520 N.Y.S.2d 370, 514 N.E.2d 865 (1987), and People v. Ventimiglia, 52 N.Y.2d 350, 438 N.Y.S.2d 261, 420 N.E.2d 59 (1981), the Defendant requests that the People deliver to the undersigned complete information concerning all specific instances of the Defendant's prior *uncharged* criminal, vicious, or immoral conduct that the People intend introduce as direct evidence at trial, or upon cross examination, to impeach the credibility of the Defendant, should he choose to testify at trial. Pursuant to CPL 240.43, the defense requests that the Court order the prosecution to provide this information within three

days, excluding Saturdays, Sundays and holidays, prior to the commencement of jury selection.

81. To the extent that the prosecution introduces evidence of uncharged crimes on its direct case, the defense requests that it be provided with all Rosario material of the witness relating to such uncharged crimes. People v. Lineszy, 212 A.D.2d 548, 622 N.Y.S.2d 325 (2d Dep't 1995).

82. Defendant also requests that the Court order the prosecution to provide any discovery to which the Defendant is entitled pursuant to People v. Rosario, 9 N.Y.2d 286, 213 N.Y.S.2d 448, 173 N.E.2d 881, 7 A.L.R.3d 174 (1961), and CPL 240.45 to the Defendant within three days, excluding Saturdays, Sundays and holidays, prior to the commencement of any hearing and/or trial relating to this matter.

83. The Defendant requests disclosure of any other information required to be disclosed by the People pursuant to the New York or United States Constitutions.

H. BRADY

84. Pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), your affirmant requests that the prosecution provide all information, in whatever form available, supporting the position that the Defendant did not commit the crime(s) charged, including but not limited to:

a. Any record of previous arrests or convictions or any other evidence or information demonstrating participation in dangerous, vicious, immoral or criminal behavior on the part of the victim, and/or any persons intended to be called as witnesses by the prosecutor, including but not limited to "rap sheets", police personnel records, or other memoranda; see People v Pressley, 234 AD2d 954, 652 NYS2d 436 (4th Dept 1996), affirmed 91 NY2d 925, 666 NYS2d 555, 689 NE2d 555 (1997); People v Valentin, 1 AD3d 982, 767 NYS2d 343 (4th Dept 2003).

b. Any statements known to be false or erroneous made to a public servant engaged in law enforcement activity or a Grand Jury or a Court by persons intended to be called as witnesses;

c. Any evidence, testimony, transcript, statement or information indicating that any prospective prosecution witness on any occasion gave false, misleading or contradictory information regarding the charge at bar or any related matters, to persons involved in law enforcement or to their agents or informers;

d. Any evidence, testimony, transcript, statement or information indicating that any prospective prosecution witnesses have given statements that are or may be contradictory to each other;

e. Any information recounting a misidentification of the Defendant as a perpetrator of the crime(s) charged or indicating a failure on the part of any potential witness to identify the Defendant as the perpetrator of the crime(s) charged;

f. Any information indicating that any prospective prosecution witness has or had a history of mental or emotional disturbance;

g. Full disclosure of any consideration, promise of consideration, or expectation of consideration offered to any prospective prosecution witness, including but not limited to, leniency, favorable treatment, assistance with respect to any pending legal proceeding, or any reward or other benefit whatsoever that will or could be realized by the witness as a result of the witness's testimony;

h. Any threats, express or implied, direct or indirect, made to any prosecution witness, including criminal prosecution or investigation, any change in the probationary, parole, or custodial status of the witness, or any other pending or potential legal disputes between the witness and the prosecution or over which the prosecution has a real, apparent, or perceived influence;

i. Complete information of each occasion when each witness who was or is an informer, accomplice, or co-conspirator has testified before any Court or Grand Jury, including date, caption, and indictment number of the case;

j. Any malfunction of any instrumentality used for any scientific test for a period of 24 hours immediately prior to the test or analysis involving the Defendant until 24 hours thereafter;

k. Any repetition of any scientific test and any differing results obtained;

l. Any lack of qualification by any person performing any scientific test in connection with this matter;

m. Any information to the effect that all or some of the evidence that may be utilized by the People at trial was illegally or improperly obtained or was obtained even partially as the result of the improper acquisition of some other evidence or information;

n. All evidence in the possession, custody or control of the District Attorney or any police agency, the existence of which is known to the District Attorney, or which by due diligence may become known to the District Attorney, which may be, or may tend to be favorable or exculpatory to the Defendant, and which is or may be material to the issue of guilt or punishment.

I. MOTION IN LIMINE

Preclusion of Medical Records

85. Upon information and belief, and based upon my review of the discovery and Bill of Particulars provided by the People in this matter, the People intend to offer at trial the following medical records of the alleged victim in this matter:

a. Good Samaritan Hospital (New York) medical records from February 2013 to January 15, 2014;

- b. Dr. Gerald Karnow (New York) medical records October 2011 to January 10, 2014;
- c. The Apothecary (New York) prescription records from November 2012 to January 10, 2014;
- d. Dr. Kenneth Zatz (New York) medical records from March 2013 to January 16, 2014;
- e. Dr. Eric Jason Roffman (New York) medical records from April 2013 to June 2013;
- f. Orange Regional Medical Center (New York) records from June 2013;
- g. Medical Prescription Equipment Records-MedFair, Inc. from April 2013 to December 2013;
- h. Dr. Elena Treskova/Dr. Ivan Darenkov (New York) medical records from April 2013 to December 2013;
- i. Alabama Department of Health WIC records from December 2008 to June 2010;
- j. Alabama Department of Health Medicaid records (Alabama) from July 2009 to November 2010;
- k. Children's of Alabama Hospital records from February 2009 to September 2010;
- l. Cornerstone Pediatrics (Alabama) medical records from February 2009 to January 2010;
- m. Decatur General (Morgan) Hospital (Alabama) records from January 2009;
- n. ENT Associates of Alabama medical records from May 2009;

- o. Decatur ENT (Alabama) medical records from August 2009 to December 2009;
- p. Family Healthcare Clinic (Alabama) medical records from July 2010 to October 2010;
- q. Good Hope Dental Center (Alabama) records from July 2009 to March 2010;
- r. Huntsville Hospital Medical (Alabama) records from December 2008 to February 2009;
- s. Alabama Allergy & Asthma medical records from May 2009 to January 2010;
- t. Morgan County Home Care (Alabama) records from January 2009 to June 2010;
- u. Parents & Children Together (Alabama) records from January 2009 to may 2009;
- v. Pediatric Gastroenterology Associates (Alabama) medical records from January 2009;
- w. Southern Rural Health Care Medical (Alabama) records from February 2009 to April 2009;
- x. All Children's Hospital (Florida) medical records from February 2011 to October 2012;
- y. Dr. Jay Arango (Florida) medical records from January 2011 to March 2012;
- z. Balance Chiropractic Wellness Centre (Florida) medical records from April 2011 to April 2012;
- aa. Bayfront Anesthesia Services (Florida) medical records from May 2011 through June 2011;

- bb. Bayfront Same Day Surgery Center (Florida) medical records from May 2011;
- cc. Dr. Susan Blankenship, DMD (Florida) records from January 2011 to October 2012;
- dd. Florida Hospital North Pinellas (Florida) medical records from July 2, 2012;
- ee. Better Health Medical Center (Florida) records;
- ff. Dr. Holly Johantgen (Florida) medical records from April 2011 to December 2012;
- gg. Kids Home Care (Florida) medical records from January 2011 to December 2012;
- hh. Laboratory Corp of American (Florida) records from April 2011 to March 2013;
- ii. Laboratory Physicians PA (Florida) medical records from May 2011;
- jj. Dr. Elisa Lynskey (Florida) medical records from April 2011 to June 2011;
- kk. Dr. Peter Orobello (Florida) medical records from January 2011 to June 2011;
- ll. Suncoast Center, Inc. (Florida) medical records from June 2011 to August 2011;
- mm. Walgreen's Pharmacy (Florida) records from April 2009 to September 2012;
- nn. Dr. Michael Wisley (Florida) medical records from January 2011 to October 2012;
- oo. Xerox State Healthcare, LLC (Florida) medical records from January 2011 to October 2012;

pp. Vanderbilt University Medical Center (Florida) records from January 2010 to November 2010;

qq. Dr. Christopher Wooten (Florida) medical records from January 2010 to November 2010;

86. As set forth in the People's "Bill of Particulars", a copy of which is annexed hereto as Exhibit "I", the People allege that the Defendant committed the crimes against her son as set forth in Count 1 and Count 2 of the Indictment herein "on or about and between January 19, 2014 and January 23, 2014" and that the Defendant "introduced sodium chloride into his gastrointestinal tube causing him to become increasingly ill after each visit to the bathroom" and that these actions "caused the death of Garnett Paul Spears".

87. Notwithstanding the fact that the alleged incidents took place between January 19, 2014 and January 23, 2014, the above referenced medical records ("a through "qq") do not relate to those dates at all and in most instances are extremely remote in time to the alleged incidents that took place between January 19, 2014 and January 23, 2014. Accordingly, all of the foregoing referenced medical records are irrelevant to this matter for this reason alone. However, these records are additionally irrelevant because they contain absolutely no relevance as to the People's allegations that the alleged victim died from sodium chloride poisoning that allegedly occurred between January 19, 2014 and January 23, 2014. Based upon the foregoing, it is respectfully submitted that this Court must preclude the People from offering the foregoing medical records at trial.

Preclusion of Facebook and MySpace Records

88. Upon information and belief, and based upon my review of the discovery and Bill of Particulars provided by the People in this matter, the People intend to offer at trial Facebook profile pages, documents and photos in connection with Facebook profiles "hippyhappymomma" "LaceySpears.16", "LaceySpears.33" and "Garnett's Journey". In addition the People intend to offer at trial MySpace photos.

89. As set forth in the People's "Bill of Particulars", a copy of which is annexed hereto as Exhibit "I", the People allege that the Defendant committed the crimes against her son as set forth in Count 1 and Count 2 of the Indictment herein "on or about and between January 19, 2014 and January 23, 2014" and that the Defendant "introduced sodium chloride into his gastrointestinal tube causing him to become increasingly ill after each visit to the bathroom" and that these actions "caused the death of Garnett Paul Spears".

90. Based upon the foregoing, it is respectfully requested that the People be precluded from offering at trial all information derived from the aforementioned Facebook profiles and MySpace account that does not specifically relate to or depict the alleged events that occurred between January 19, 2014 and January 23, 2014. Such information is entirely and wholly irrelevant.

Preclusion of Expert Testimony, Documents/Records and Argument Relating to "Munchausen by Proxy" also known as "Factitious Disorder by Proxy"

91. Upon information and belief, the People intend to offer at trial expert testimony, documents/records and arguments regarding an alleged mental disorder known as "Munchausen by Proxy" and will attempt to allege that Defendant suffered and/or suffers therefrom. However, as this Court is well aware, the Defendant has not submitted a Notice of Mental Disease or Defect in this matter. By reason of this fact, any expert witness testimony and arguments offered by the People relating to Defendant's alleged mental state would not be based upon facts but rather mere speculation and/or unsupported assumptions. Based upon the foregoing, it is respectfully submitted that this Court must preclude the People from offering such expert testimony and argument at trial and from offering any documents/records of any kind regarding "Munchausen by Proxy" also known as "Factitious Disorder by Proxy".

J. MEMORANDUM OF LAW

92. It is my belief that I am currently unaware of many of the relevant facts necessary to my preparation of the defense in this matter. I expect to discover many of these

essential facts from the written response to this motion as well as from any hearings that are held as a result of this motion. Consequently, at this time I am unable to prepare legal briefs or memoranda concerning many of the issues relevant to the defense of this case.

93. I request that the Court allow me an opportunity, after the hearings in this matter and prior to the Court's decision on the issues addressed by those hearings, to submit a memorandum of law for the Court's consideration, so that I might more effectively represent the interests of my client.

K. SUBSEQUENT MOTIONS

94. I have endeavored to encompass within this Omnibus Motion all possible pretrial requests for relief, based upon the information that is now available to me. I request that the Court grant me leave to submit subsequent motions, should facts discovered through this motion or hearings related to this motion, indicate that additional relief may be warranted.

WHEREFORE, I request that this Court grant the relief sought in the Notice of Motion attached hereto.

Affirmed under penalty of perjury pursuant to CPLR 2106.

Dated: August 28, 2014
White Plains, New York



DAVID R. SACHS, ESQ.