

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
MIRIAM E. ROCAH, as District Attorney of
Westchester County,

Petitioner,

DECISION
ORDER & JUDGMENT

Index No. 1356/22

- against -

MATTHEW J. COSTA, Judge of the New Rochelle
City Court, MICHAEL MOLINA, Defendant, and
GUSTAVO VILLAMARES SERRANO, Defendant,

Respondents.

-----X
CACACE, J.

The following papers, numbered one (1) through eight (8), were read on this petition for relief pursuant to article 78 of the Civil Practice Law and Rules (CPLR).

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Upon the foregoing papers, it is decided, ordered and adjudged that the instant petition is resolved as follows:

Procedural History and Contentions

The petitioner commenced this proceeding by the filing of an order to show cause submitted pursuant to article 78 of the CPLR, seeking an order of the Court (1) issuing a writ of prohibition to prevent respondent Matthew J. Costa, Judge of the City Court of the City of New Rochelle (hereinafter, Judge Costa), from enforcing the determination he made to preclude the petitioner from introducing specified testimonial and documentary evidence during proceedings conducted in connection with the criminal prosecution of respondent Michael Molina in the City Court of the City of New Rochelle in the matter of *People v Michael Molina* under Docket No. CR-3495-21 (hereinafter, the Molina matter), and (2) issuing a writ of prohibition to prevent respondent Judge Costa from enforcing the determination he made to preclude the petitioner from introducing specified testimonial and documentary evidence during proceedings conducted in connection with the criminal prosecution of respondent Gustavo Villamares Serrano in the City Court of the City of New Rochelle in the matter of *People v Gustavo Villamares Serrano* under Docket No. CR-5661-21 (hereinafter, the Serrano matter).

In support of the instant petition for relief, the petitioner alleges that respondent Judge Costa resolved a counseled pre-trial motion made on behalf of respondent Molina in connection with the *Molina* matter by making a written determination through the filing of a Decision and Order, dated January 14, 2022, that served to preclude the petitioner from offering the “testimony of Trooper [Angelo] Fortune [of the New York State Police (NYSP)] and . . . the use of any evidence procured by Trooper Fortune in this matter,” ostensibly referring to any prospective trial of the *Molina* matter (hereinafter, challenged determination #1). Notably, the order of preclusion

entered through challenged determination #1 was predicated upon respondent Judge Costa's determination to impose a sanction against the petitioner as a consequence of her conceded failure to timely disclose impeachment material, characterized within challenged determination #1 as "Trooper Fortune's disciplinary records," to respondent Molina in connection with her prosecution of the *Molina* matter. In this regard, challenged determination #1 reflected respondent Judge Costa's recognition that respondent Molina was arraigned in connection with the *Molina* matter on July 2, 2021, and that the petitioner had failed to disclose Trooper Fortune's disciplinary records to respondent Molina until November 10, 2021, which lead him to make the initial determination that the petitioner had thereby failed to satisfy her obligation to expeditiously make such a disclosure upon her receipt of such records pursuant to the express terms of Criminal Procedure Law (CPL) 245.20(1)(k), and to ultimately make the final determination to consequently impose the sanction of preclusion against the petitioner through his exclusive reliance upon the authority provided by CPL 245.80(1)(a) and (2).

In further support of the instant petition for relief, the petitioner also alleges that respondent Judge Costa resolved a counseled pre-trial motion made on behalf of respondent Serrano in connection with the *Serrano* matter by making a written determination through the filing of a Decision and Order, dated April 4, 2022, that served to preclude the petitioner from offering "any testimony regarding the Datamaster chemical test and the Standard Field Sobriety Test," ostensibly referring to any prospective trial of the Serrano matter (hereinafter, challenged determination #2). Notably, the order of preclusion entered through challenged determination #2 was predicated upon respondent Judge Costa's determination to impose a sanction against the petitioner as a consequence of her unilateral refusal to disclose the NYSP Standardized Field

Sobriety Test (SFST) Training Manual and Datamaster Operating Manual, material that was characterized within challenged determination #2 as “automatic discovery required by CPL 245.20(1)(s),” to respondent Serrano in connection with her prosecution of the *Serrano* matter. In this regard, challenged determination #2 reflected respondent Judge Costa’s recognition that respondent Serrano was arraigned in connection with the *Serrano* matter on November 22, 2021, and that the petitioner had knowingly declined to disclose the SFST Training Manual and Datamaster Operating Manual to respondent Serrano without first being excused from making such disclosures pursuant to the procedure outlined through CPL 245.20(5) and CPL 245.70, which lead him to make the initial determination that the petitioner had thereby failed to satisfy her obligation to make such a disclosure as soon as practicable pursuant to the express terms of CPL 245.20(1)(s), and to ultimately make the final determination to consequently impose the sanction of preclusion against the petitioner through his exclusive reliance upon the authority provided by CPL 245.80(1)(a) and (2).

Although the instant petition for relief raises challenges to each of these two distinct and separate determinations made by respondent Judge Costa, the petitioner supports her respective challenges to each of them through application of the very same legal argument that provides for the interpretation of subdivisions (1) and (2) of CPL 245.80 to limit the authority of a motion court to impose the sanction of preclusion to only those occasions where there is a showing of prejudice made by the party entitled to disclosure. Thereupon, the petitioner submits that each of the challenged determinations made by respondent Judge Costa reflect his exclusive reliance for same upon his erroneous application of the terms of CPL 245.80(1) and (2) to afford him the authority to impose the sanction of preclusion against the petitioner despite the absence of a

showing of prejudice having been made by the party entitled to disclosure. Consequently, the petitioner submits that respondent Judge Costa's imposition of the sanction of preclusion upon her through challenged determinations #1 and #2, respectively, reflected action that he had taken in excess of his legal authority under CPL 245.80(1)(a) and (2), and therefore, constituted action taken in the absence of lawful jurisdiction.

Subsequent to respondent Judge Costa's filing of challenged determination #1 on January 14, 2022, the petitioner filed a motion to reargue same pursuant to CPLR 2221, which remains pending in the City Court of the City of New Rochelle without resolution as of the date of the filing of the instant Decision, Order and Judgment by this Court, despite the apparent full submission of all moving papers in connection therewith as of March 18, 2022. Following respondent Judge Costa's filing of challenged determination #2 on or about April 4, 2022, the petitioner relented on her earlier refusal and elected to disclose the outstanding SFST Training Manual and Datamaster Operating Manual to respondent Serrano on April 29, 2022, having refrained from filing a motion to reargue challenged determination #2 with respondent Judge Costa. As asserted by the petitioner through her moving papers in this proceeding, she was aware on May 13, 2022 that her motion to reargue challenged determination #1 had not been decided nor otherwise addressed by respondent Judge Costa despite the full submission of same nearly two months earlier on March 18, 2022, and she was further aware at that time that the 120-day limitations period provided by CPLR 217 would operate to prevent her from obtaining review of challenged determination #1 pursuant to article 78 of the CPLR due to the expiration of that applicable limitations period on May 14, 2022.

Against this backdrop, by order to show cause filed with the Supreme Court, Westchester

County (Warhit, J.) on May 13, 2022, the petitioner commenced the instant article 78 proceeding to challenge respondent Judge Costa's impositions of the sanction of preclusion against her as a consequence of her failure to comply with her discovery obligations imposed by CPL 245.20(1)(a)-(u) pursuant to challenged determination #1 and challenged determination #2, respectively, alleging that each of these determinations reflects an improper exercise of judicial authority taken in contravention of law and in the absence of jurisdiction, for which the remedy of prohibition lies and otherwise represents a proper exercise of discretion. By the respective answers filed on behalf of each of the three respondents, the primary argument raised in opposition to the petitioner's challenge to respondent Judge Costa's imposition of the sanction of preclusion concerns their assertion that the instant petition for relief must be denied based upon the unavailability of the remedy of prohibition against respondent Judge Costa for his legal determination to sanction the petitioner for her failure to comply with her discovery obligations imposed by CPL 245.20(1)(a)-(u). In the alternative to his primary argument, respondent Molina further submits that the controversy over which the petitioner seeks relief through this proceeding against him is not yet ripe for review, and that the petitioner should be precluded from seeking the relief she seeks because she had failed to preserve the argument she raises in support of the instant petition during motion practice conducted in connection with her litigation of the pre-trial defense motion brought in the *Molina* matter.

Discussion/Legal Analysis

Insofar as the challenges raised through this proceeding are concerned, the Court notes that the petitioner seeks relief in the nature of prohibition that is made available pursuant to CPLR 7803(2), which provides that a petitioner may commence a proceeding to determine “whether [a] body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction” (CPLR 7803[2]; *see* Siegel, N.Y. Prac. § 559 [5th ed.]). In all events, it is well-settled that relief in the nature of a writ of prohibition issued pursuant to CPLR 7803(2) constitutes an extraordinary remedy that is made available to an aggrieved petitioner seeking to prevent a court from either acting in the absence of subject matter jurisdiction over a proceeding, or from acting in excess of its authorized powers in a proceeding over which it otherwise has such jurisdiction (*see Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see also Matter of Pirro v Angiolillo*, 89 NY2d 351, 355; *Matter of Johnson v Sackett*, 109 AD3d 427, *lv. denied* 22 NY3d 857; *Matter of Clark v Newbauer*, 148 AD3d 260; *Matter of Cosgrove v Ward*, 48 AD3d 1150). However, this Court remains mindful that “[t]he writ does not lie as a means of seeking collateral review of an error of law, no matter how egregious that error might be . . . but only where the very jurisdiction and power of the court are in issue” (*Matter of Brown v Blumenfeld*, 103 AD3d 45, 55, quoting *Matter of Steingut v Gold*, 42 NY2d 311, 315; *see Matter of Johnson v Sackett*, 109 AD3d at 429; *Matter of Johnson v Price*, 28 AD3d 79, 81). In this regard, “[a]lthough the distinction between legal errors and actions made in excess of authority is not always easily made, abuses of power may be identified by their impact on the entire proceeding as distinguished from an error in a proceeding itself” (*Matter of Clark v Newbauer*, 148 AD3d at

264, quoting *Matter of Holtzman v Goldman*, 71 NY2d at 569; see *Matter of Steingut v Gold*, 42 NY2d at 315; see also *Matter of Cuomo v Hayes*, 54 AD3d 855, 857).

As it is not a subject of contention between the parties here, and is otherwise beyond cavil, this Court's analysis begins with its recognition that respondent Judge Costa possessed and maintained subject matter jurisdiction over discovery issues arising in the respective *Molina* and *Serrano* matters at all times relevant to this action based upon his assignment to preside over these criminal proceedings in his capacity as a sitting Judge of the City Court of the City of New Rochelle (see NY Const, art VI, § 17). Consequently, this Court's inquiry must necessarily focus upon the scope of the legal authority relied upon by respondent Judge Costa through CPL 245.80 to support his imposition of the sanction of preclusion against the petitioner through both challenged determinations #1 and #2, incident to this Court's ultimate determination of whether same constitutes action that he took in excess of his authorized powers. In this regard, the petitioner submits that when respondent Judge Costa imposed the sanction of preclusion against her through challenged determinations #1 and #2, respectively, his exclusive reliance upon CPL 245.80, as the sole source of his cited authority to do so, reflected action that respondent Judge Costa had taken in excess of the legal authority afforded to him thereunder due to the absence of a required showing of resultant prejudice having been made by either respondent *Molina* or respondent *Serrano*.

Specifically, CPL 245.80(1)(a), entitled "[n]eed for remedy or sanction" - as in effect and otherwise applicable when challenged determinations #1 and #2 were issued by respondent Judge Costa prior to the amendment thereof by the Laws of 2022, ch 56, §2, eff. May 9, 2022 - in relevant part provides that "[w]hen material or information is discoverable under this article but

is disclosed belatedly, the court shall impose an appropriate remedy or sanction if the party entitled to disclosure shows that it was prejudiced..”¹ Furthermore, CPL 245.80(2), entitled “[a]vailable remedies or sanctions,” insofar as relevant to the pre-hearing/pre-trial stage of the *Molina* and *Serrano* matters when challenged determinations #1 and #2 were issued, provides - insofar as relevant here - that “[f]or failure to comply with any discovery order . . . the court may make a further order for discovery, grant a continuance, . . . preclude . . . a witness’s testimony . . ., admit or exclude evidence . . .”. Therefore, in relation to one another, it is evident that CPL 245.80(2) pertains only to the scope of permissible sanctions that are authorized subsequent to a preliminary finding that a party entitled to the disclosure of such evidence has affirmatively made a successful showing to the motion court of some resultant prejudice that it has suffered as a consequence of the belated disclosure of discovery by the adverse party pursuant to the terms of CPL 245.80(1)(a) or (b). Indeed, as CPL 245.80(2) clearly provides for the imposition of the sanctions imposed by respondent Judge Costa through challenged determinations #1 and #2, respectively, which include the preclusion of witness testimony and the exclusion of evidence, this Court recognizes that its analysis of the scope of respondent Judge Costa’s legal authority to impose those sanctions against the petitioner rests solely upon the Court’s assessment of the authority which respondent Judge Costa could have permissibly drawn from CPL 245.80(1)(a).

Turning first to consider challenged determination #1, the Court’s scrutinizing review of the record reveals that respondent Judge Costa issued same to address and resolve respondent

¹As CPL 245.80(1)(b) applies only where a discovery disclosure failure results from lost or destroyed material, which was not averred by any of the parties nor determined by respondent Judge Costa in either of the challenged determinations at issue here, it bears no relevance to the Court’s analysis in this proceeding.

Molina's counseled pre-trial motion filed in the *Molina* matter, which had specifically moved for him to reject the petitioner's previously filed certificate of compliance (COC) and declaration of readiness (DOR) in response to the petitioner's conceded failure to timely disclose discoverable material as required by CPL 245.20, and thereupon, specifically moved for an order dismissing the *Molina* matter upon statutory speedy trial grounds defined by CPL 30.30(1)(b) pursuant to CPL 170.30(e). In the alternative, without making any claim of resultant prejudice, respondent Molina's motion requested that respondent Judge Costa "sanction" the petitioner, although notably not pursuant to the authority of CPL 245.80, by determining that the time period of the petitioner's delayed disclosure of Trooper Fortune's disciplinary records to respondent Molina be considered chargeable to the petitioner within the meaning of speedy trial jurisprudence under CPL 30.30. Similarly, the Court's review of challenged determination #2 reveals that respondent Judge Costa issued same to address and resolve respondent Serrano's counseled pre-trial motion filed in the *Serrano* matter, which had specifically moved him to strike the COC filed by the petitioner in connection therewith as a consequence of her legal determination to withhold the SFST Training Manual and Datamaster Operating Manual from the discovery she had already disclosed, as she had not first sought a ruling from the motion court regarding the discoverability of such material pursuant to the procedure outlined in CPL 245.70. In the alternative, without making any claim of resultant prejudice, respondent Serrano moved respondent Judge Costa to "sanction" the petitioner pursuant to CPL 245.80 by precluding the testimony of any and all police/civilian witnesses, and further excluding all breath test results and information. Of great significance, this Court's scrutinizing examination of all counseled motion papers submitted by respondents Molina and Serrano in connection with challenged determinations #1 and #2,

respectively, revealed the absence from such papers of any claim, let alone an affirmatively proffered showing, of actual prejudice suffered by either respondent Molina or respondent Serrano as a consequence of the petitioner's delayed disclosure of the discoverable materials they respectively complained of, nor do such papers articulate or otherwise raise argument that any such resultant prejudice might have existed.

Thereupon, having been confronted with respondent Molina's pre-trial motion moving him to reject the petitioner's previously filed COC and DOR as a consequence of her belated discovery disclosure, and to thereupon dismiss the *Molina* matter upon speedy trial grounds pursuant to CPL 30.30, or to alternatively sanction the petitioner by diminishing otherwise excludable speedy trial time vis-a'-vis CPL 30.30(4)(a), respondent Judge Costa resolved respondent Molina's motion by neither granting nor denying either form of requested relief. Rather, despite the absence of any request by respondent Molina for the imposition of the sanction of preclusion against the petitioner, and despite the absence of any attempt by respondent Molina to make a showing that he had suffered some form of resultant prejudice as a consequence of the petitioner's delayed discovery disclosure, respondent Judge Costa produced challenged determination #1 to accord respondent Molina relief that he never requested to ostensibly ameliorate an amorphous prejudice of which he never complained. Indeed, through challenged determination #1, respondent Judge Costa revealed his recognition that CPL 245.80(1)(a) required that respondent Molina make a showing of resultant prejudice before he would be empowered to sanction the petitioner, as he related his finding therein that respondent Molina had "shown under the totality of the circumstances that [he] was prejudiced" by the petitioner's discovery failure in the *Molina* matter. Accordingly, this Court finds that despite

respondent Judge Costa's proper identification in challenged determination #1 of the governing statutory provisions of CPL 245.80(1) and (2), his determination therein to sanction the petitioner for her delayed discovery disclosure by precluding specific testimony and evidence, irrespective of the complete absence of any showing by respondent Molina that he had suffered any articulated prejudice as a consequence thereof, represented impermissible, legally incorrect and otherwise unavailable action taken by respondent Judge Costa in excess of his authority under those controlling provisions of statutory law (*see People v Elmore*, __ AD3d __, 2022 NY Slip Op 07345; *see also People v Waksal*, 75 Misc 3d 129[A], *1 [App. Term, 2d Dep't 2022]; *People v Jateen*, 74 Misc 3d 134[A], *1 [App. Term, 2d Dep't 2022]; *People v Roc*, 77 Misc 3d 1223[A], *3 [Crim Ct, Queens County 2023]; *People v Velardi*, 76 Misc 3d 323, 330-331 [City Ct, Oneida County 2022]; *People v Higgins*, 75 Misc 3d 1232[A], *3 [City Ct, Westchester County 2022]).

Similarly, having been confronted with respondent Serrano's pre-trial motion moving him to strike the COC filed by the petitioner in connection with the *Serrano* matter as a consequence of her withholding of the SFST Training Manual and Datamaster Operating Manual from the discovery she had already disclosed, or to alternatively sanction the petitioner by precluding witness testimony and excluding all breath test evidence, respondent Judge Costa resolved respondent Serrano's motion by granting him the primary relief he sought by striking the COC, and by also granting respondent Serrano the alternative relief that he, by the clear import of his motion papers, no longer sought since respondent Judge Costa had already decided to strike the petitioner's COC. Rather, although he afforded respondent Serrano the primary relief he sought by striking the COC, respondent Judge Costa - without explanation - went further and also

granted respondent Serrano's application made in the alternative by deciding to preclude witness testimony regarding the Datamaster test and the SFST. Indeed, despite the absence of any attempt by respondent Serrano to make a showing that he had suffered some form of resultant prejudice as a consequence of the petitioner's delayed discovery disclosure, respondent Judge Costa produced challenged determination #2 to accord respondent Serrano relief that he was no longer requesting to ostensibly ameliorate an amorphous prejudice of which he never complained. Moreover, through challenged determination #2, respondent Judge Costa revealed his recognition of the applicability of CPL 245.80(1) to provide him with the authority to impose a sanction against the petitioner for a discovery disclosure failure, but curiously declined to make reference therein to the statute's clearly stated language expressly requiring that the party entitled to the disclosure of discovery must first make a showing of resultant prejudice before he would be empowered to impose a sanction upon the petitioner. Rather, through challenged determination #2, respondent Judge Costa cited to CPL 245.80(1) while overlooking its text, and then related his finding therein that respondent Serrano had "shown under the totality of the circumstances that [he] was prejudiced" by the petitioner's discovery failure in the *Serrano* matter as his legal basis for ordering the preclusion of witness testimony as a sanction imposed against the petitioner. Accordingly, this Court finds that despite respondent Judge Costa's proper identification in challenged determination #2 of the governing statutory provisions of CPL 245.80(1) and (2), his determination therein to sanction the petitioner for her delayed discovery disclosure by ordering the preclusion of testimony, irrespective of the complete absence of any showing by respondent Serrano that he had suffered any articulated prejudice as a consequence thereof, represented impermissible, legally incorrect and otherwise unavailable action taken by

respondent Judge Costa in excess of his authority under those controlling provisions of statutory law (*see People v Elmore*, __ AD3d at *2; *see also People v Waksal*, 75 Misc 3d at *1; *People v Jateen*, 74 Misc 3d at *1; *People v Roc*, 77 Misc 3d at *3; *People v Higgins*, 75 Misc 3d at *3; *People v Velardi*, 76 Misc 3d at 323-331).

In addition to the applicable constraints of CPL 245.80(1) and (2) which should have been observed by respondent Judge Costa when he issued challenged determinations #1 and #2, he would have been well-served to recognize that in connection with a retrospective review of a motion court's authority to order preclusion as a remedy for a prosecutor's discovery failure, the Court of Appeals has instructed that the "[p]reclusion 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). Aside from the *Jenkins* Court's ultimate imposition of an obligation upon the motion court to first consider all potential sanctions of less severity before resigning itself to utilize the hammer of preclusion to address a discovery disclosure failure, the underlying decision of the Appellate Division, Second Department which the High Court affirmed had cautioned motion courts that the imposition of the extreme sanction of preclusion would not be warranted unless the record revealed a showing of undue prejudice to the defense or prosecutorial bad faith in relation to the delay (*see People v Jenkins*, 284 AD2d 550, 551, *aff'd* 98 NY2d 280; *see also People v Fuller*, 165 AD3d 1163, 1165, *lv denied* 32 NY3d 1204). Indeed, these guardrails that were put in place to guide a motion court's recognition of the boundaries within which it is permissible to impose the sanction of preclusion against the prosecution for a discovery failure remain in full force and effect subsequent to the enactment of article 245 of the CPL, as the Appellate Division, Second Department quite recently held that in

the absence of a showing that the prosecution's delayed disclosure of discovery was motivated by bad faith "the extreme sanction of preclusion" was not warranted (*see People v Porter*, 210 AD3d 1012, 1013). Moreover, recent guidance in this area further reinforces the continuing applicability of the pre-existing premise that the resultant prejudice which could justify the imposition of the sanction of preclusion for a discovery failure must be incurable, as it has been held repeatedly that no such sanction against the prosecution will be warranted in the absence of a criminal defendant's affirmative showing that it had been prejudiced by the inability to effectively use specifically identified evidence that was disclosed untimely by the prosecution (*see People v Sweet*, 200 AD3d 1315, 1319-1320, *lv. denied* 38 NY3d 930; *see also People v Elmore*, __ AD3d __, 2022 NY Slip Op. 07345; *People v McKenny*, 191 AD3d 510). Consequently, given the complete absence from the record of any indication that either respondent Molina or respondent Serrano had made (or had attempted to make) any showing of resultant prejudice or bad faith by the petitioner in connection with her delayed discovery disclosure, and as respondent Judge Costa made no effort through either challenged determinations #1 or #2 to ascertain whether an alternative sanction other than preclusion could have effectively addressed the amorphous prejudice that he ostensibly sought to ameliorate by imposing such an extreme sanction, this Court further finds that respondent Judge Costa's imposition of the sanction of preclusion against the petitioner for her delayed discovery disclosure in both challenged determinations #1 and #2, represented impermissible, legally incorrect and otherwise unavailable action taken by respondent Judge Costa in excess of his authority defined by controlling jurisprudence (*see People v Jenkins*, 98 NY2d at 284, *see also People v Faulk*, 185 AD3d 953, 957-58, *lv. denied* 35 NY3d 1112; *People v Porter*, 210 AD3d at

1013; *People v Fuller*, 165 AD3d at 1165; *People v Thomas*, 12 AD3d 383, 384).

Upon this record, recognizing that the collateral relief afforded by a writ of prohibition will lie to address a trial court's erroneous action only when the challenged ruling implementing such error reflects an excess of the trial court's authorized power in such a manner that it is understood to impact the underlying proceeding as a whole in a conclusive manner akin to the termination of the proceeding (*Matter of Holtzman*, 71 NY2d at 570), and when the aggrieved petitioner sufficiently demonstrates "a clear legal right to the extraordinary remedy of prohibition" (*Matter of Marino v Kahn*, 49 AD3d 741, 741), this Court must next examine the nature of the impact that respondent Judge Costa's erroneous preclusion rulings ordered pursuant to challenged determinations #1 and #2, respectively, will have upon the Molina and Serrano matters. With regard to challenged determination #1, this Court recognizes that respondent Judge Costa's erroneously ordered sanction therein to preclude the petitioner from supporting the prosecution's direct case at trial with the "testimony of Trooper [Angelo] Fortune [of the New York State Police (NYSP)] and . . . the use of any evidence procured by Trooper Fortune in this matter", would effectively prevent the prosecution from presenting all potential evidence of respondent Molina's alleged criminal responsibility for the violations of the Vehicle and Traffic Law (VTL) charged in the *Molina* matter. Similarly, with regard to challenged determination #2, the Court further recognizes that respondent Judge Costa's erroneously ordered sanction therein to preclude the petitioner from supporting the prosecution's direct case at trial with "any testimony regarding the Datamaster chemical test and the Standard Field Sobriety Test", would effectively prevent the prosecution from presenting nearly all (and likely the most persuasive) potential evidence of respondent Serrano's alleged criminal responsibility for the violations of

VTL §§ 1192(2) and 1192(3) which represent the only crimes charged in the *Serrano* matter. Consequently, as respondent Judge Costa's erroneous rulings to issue preclusion orders against the petitioner through challenged determinations #1 and #2, respectively, effectively terminate the ability of the petitioner to prosecute all of the crimes charged in connection with the *Molina* and *Serrano* matters, respectively, the significance of the impact of these erroneous rulings upon the petitioner is sufficient to establish the petitioner's clear legal right to the remedy of prohibition in this case, and further leads this Court to conclude that prohibition does lie to enable the petitioner to seek redress of respondent Judge Costa's errors (*see Johnson v Sackett*, 109 AD3d 427, *lv. denied* 22 NY3d 857; *see also Matter of Cosgrove v Ward*, 48 AD3d 1150, *lv. denied* 7 NY3d 929; *Matter of Clark v Newbauer*, 148 AD3d 260).

Having found that prohibition is available to correct respondent Judge Costa's erroneous sanctioning of the petitioner, this Court's ultimate consideration of the necessity for the exercise of its discretion to issue of a writ of prohibition on behalf of the petitioner, to adequately address and ameliorate the prejudicial impact of respondent Judge Costa's erroneous preclusion rulings that have been successfully challenged through this proceeding, is forcefully guided by an appreciation of "the gravity of the harm that would result from the act to be prohibited and whether that harm can be adequately corrected through an appeal or other proceedings at law or in equity" (*Matter of Pirro v Angiolillo*, 89 NY2d 351, 359, citing *Matter of Rush v Mordue*, 68 NY2d 348, 354; *see Johnson v Sackett*, 109 AD3d at 430-431; *see also Brown v Blumenfeld*, 103 AD3d 45, 65). As respondent Judge Costa's erroneous preclusion orders issued against the petitioner through challenged determinations #1 and #2, respectively, would effectively terminate her ability to capably prosecute all of the crimes charged in connection with both the *Molina* and

Serrano matters, and as the limited grounds for appeal provided by CPL 450.20 would serve to prevent the petitioner from seeking appellate review of such consequential judicial errors due to the nature of the challenged determinations, this Court finds that the balance weighs heavily in favor of the exercise of its discretion to invoke the remedy of prohibition sought through the instant petition (*see LaRocca v Lane*, 37 NY2d 575, 579; *see also Matter of Hoovler v DeRosa*, 143 AD3d 897, 901; *Matter of Pirro v LaCava*, 230 AD2d 348, *lv. denied* 89 NY2d 813; *Matter of Brown v Blumenfeld*, 103 AD3d at 65; *Matter of Brown v Blumenfeld*, 296 AD2d 405).

Incident to this Court's determination to hereby issue this extraordinary writ of prohibition to address the patent abrogation of legal authority reflected by respondent Judge Costa's improvident issuance of the sanction of preclusion against the petitioner in connection with the *Molina* and *Serrano* matters, this Court recognizes the absence of legal merit underlying respondent Molina's preservation and ripeness arguments upon simple recognition of the inapplicability of the rationale underlying each of these respective doctrines to this proceeding brought pursuant to article 78 for relief in the nature of prohibition to restrain an abrogation of judicial authority of such gravity and consequence as to reflect an abuse of power that would evade any other available remedy.

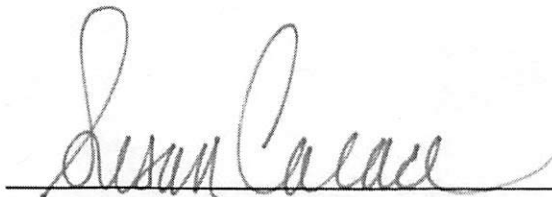
Based upon the foregoing, upon this Court's determination that the instant petition demonstrates that respondent Judge Costa's imposition of the sanction of preclusion against the petitioner for the delayed disclosure of discovery by his issuance of challenged determinations #1 and #2 in connection with the *Molina* and *Serrano* matters, in disregard of the absence of any claim or showing of prejudice resulting therefrom having been proffered by either respondent Molina or respondent Serrano, represented impermissible, legally incorrect and otherwise

unavailable action taken by respondent Judge Costa in excess of his lawful authority under the controlling jurisprudence and governing provisions of statutory law which constituted legal error causing prejudice to the petitioner of sufficient gravity to move persuade this Court to exercise its discretion to grant the instant petition for a writ of prohibition, and therefore, it is

ORDERED that respondent Judge Matthew J. Costa, City Court Judge of the City of New Rochelle, is hereby prohibited from enforcing the determination he made to preclude the petitioner from introducing specified testimonial and documentary evidence during proceedings conducted in connection with the criminal prosecution of respondent Michael Molina in the City Court of the City of New Rochelle in the matter of *People v Michael Molina* under Docket No. CR-3495-21, and is further prohibited from enforcing the determination he made to preclude the petitioner from introducing specified testimonial and documentary evidence during proceedings conducted in connection with the criminal prosecution of respondent Gustavo Villamares Serrano in the City Court of the City of New Rochelle in the matter of *People v Gustavo Villamares Serrano* under Docket No. CR-5661-21

The foregoing constitutes the Decision, Order and Judgment of this Court.

Dated: White Plains, New York
January 30, 2023



Honorable Susan Cacace
Acting Justice of the Supreme Court

HON. SUSAN CACAĆE
WESTCHESTER COUNTY
COURT JUDGE

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