

Mr. MC  
1234 Mother Copper Dr.,  
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Tel: (123) 123-1234  
Defendant in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
SANTA CLARA BRANCH

THE PEOPLE OF THE STATE	)	
OF CALIFORNIA,	)	Case No. 1-12-TR-123456
	)	
Plaintiff,	)	<b>NOTICE OF MOTION TO</b>
	)	
Vs.	)	<b>SUPPRESS EVIDENCE;</b>
	)	
Mr. MC	)	<b>DECLARATIONS;</b>
	)	
Defendant	)	<b>POINTS AND AUTHORITIES</b>
_____	)	

TO: PLAINTIFF., THE PEOPLE OF THE STATE OF CALIFORNIA, AND TO THE PROSECUTOR FOR THE WITHIN-NAMED COUNTY:

PLEASE TAKE NOTICE that on the date set for the trial, May 24, 2008 at 10:00 a.m. in Department 23 of the above-entitled Court at 1095 Homestead Road, Santa Clara, California, Defendant will move the Court to suppress an evidence from Officer Copper's note, from the back of the Notice To Appear (9876AA), pursuant to California Penal Code 1538.5.

This motion is based on the grounds, the accompanying Declaration and Points and Authorities, and on oral and documentary evidence to be presented at the hearing on the motion before or during the trial.

DATED:

\_\_\_\_\_  
Mr. MC  
Defendant in Pro Per

## DECLARATION

I, **Mr. MC**, declare:

1. I am the Defendant in the above-entitled action.
2. On May 1, 2007, I was driving my vehicle towards the northbound direction on Lawrence Expressway in Sunnyvale, CA, when I was stopped by Officer Copper of the San Jose California Highway Patrol. Officer Copper got out of the vehicle and indicated the intention to cite me for a Vehicle Code violation. I told Officer Copper that "I was driving safely!". Officer then told me that he has already written down the license plate number of the green minivan which was in front of my vehicle after I changed lane to the right. And, he said, "I am going to take a statement from the driver of the green minivan!"
3. Based on both of the responses from an Informal Discovery, one of the statement was recorded as follow:  
"ALMOST HIT ME 4XV2123 GRN MINIVAN"
4. The Declarant, "ME", of the above mentioned statement was the driver of the green minivan (or "GRN MINIVAN") of license plate number 4XV2123.
5. The above mentioned Declarant has not been identified since the legal identification information of the Declarant was never recorded in the statement.
6. According to the response of Jay Smith from the District Attorney office, it responded as follow:  
"The officer is the only witness and his address is the police department."
7. According to the response of Captain A. B. Shaw from the San Jose CHP office, it responded as follow:  
"b. The following witness will testify: Officer Copper, #12345, San Jose CHP, 2020 Junction Avenue, San Jose, CA 95131."
8. The above mentioned witness is only Officer Copper, and the Declarant of the statement, "ALMOST HIT ME", was never mentioned in both responses from an Informal Discovery.

DATED:

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**Mr. MC**

Defendant in Pro Per

## POINTS AND AUTHORITIES

### ARGUMENT

- I. OFFICER COPPER HAS FAILED TO IDENTIFY THE DECLARANT OF THE STATEMENT. THUS, THE STATEMENT FROM THE DECLARANT IS HEARSAY.

Under Federal Rule of Evidence:

#### **Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial**

(1) **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

The statement, "ALMOST HIT ME", may have been taken by Officer Copper "immediately thereafter" from the Declarant who was the driver of the green minivan. However, it is not reliable based on the ground that the legal identity of the Declarant was not recorded. For example, there were no full legal name, or driver license number of the Declarant recorded. Therefore, the Declarant could be anyone who was driving that green minivan of license plate number 4XV2123 at that time when the statement was recorded. Since the legal identity of the Declarant was not recorded "immediately thereafter", the statement of the Declarant should be considered as hearsay.

Moreover, as Officer Copper replied, "I am going to take a statement from the driver of the green minivan!" If Officer Copper took the statement after issuing me a citation, or at least ten (10) minutes afterward, such statement, "ALMOST HIT ME!", from the Declarant is considered hearsay since it was not taken "immediately thereafter" which violates the Rule 803: Hearsay Exceptions; (1) Present Sense Impression as mentioned above.

Therefore, either way, the statement, "ALMOST HIT ME!", is considered as hearsay which will prejudice the trial outcome.

- II. RESPONSE OF INFORMAL DISCOVERY MENTIONED ONE WITNESS WHO IS ONLY THE ARRESTING OFFICER

The responses from both the District Attorney office, and the San Jose CHP office only mentioned that Officer Copper will be the witness to be testified at the trial, and no other witnesses are mentioned.

III. VIOLATED DEFENDANT'S RIGHT TO CROSS-EXAMINE THE DECLARANT OR WITNESS

California Evidence Code Section 1291

- (a) Evidence of former testimony is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and:
- (1) The former testimony is offered against a person who offered it in evidence in his own behalf on the former occasion or against the successor in interest of such person; or
  - (2) The party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing.

If the Court ruled that such statement from the un-identified Declarant is admissible, it will violate the Defendant's "right and opportunity to cross-examine the declarant" in open court due to the fact that the Declarant may have personal knowledge about this matter.

DATED:

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Mr. MC  
Defendant in Pro Per

## SUMMARY

Officer Copper has failed to identify the Declarant, the driver of the green minivan mentioned above, of the statement, and both offices of the District Attorney and the San Jose CHP have not mentioned any witnesses other than Officer Copper. Therefore, I respectfully submit this request to move the Court to suppress any statements recorded by Officer Copper from the Declarant. If the Court insist that the Declarant's statement is admissible, it will violate the Defendant's right to cross-examine the Declarant or witness due to the fact that such Declarant or witness is un-identifiable. Moreover, such hearsay will prejudice the trial outcome.

DATED:

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Mr. MC

Defendant in Pro Per