

DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT ARRAIGNMENT PART

THE PEOPLE OF THE STATE OF NEW YORK,

FELONY COMPLAINT
DOCKET No.:

-against-

NYS Attorney General's
Office
AAG Cheryl J. Lee
Tel: (212) 416-8724

BROADWAY TOWING, INC.,

Defendant.

CRIMINAL INVESTIGATIONS DIVISION FORENSIC TAX AUDITOR ALAN

MAIER, of the New York State Department of Taxation and Finance, being duly sworn, deposes and says:

On or about and between December 1, 2009 through February 28, 2018, at Broadway Towing, Inc. located at 25 Broadway, Freeport, Nassau County, New York, and elsewhere, in the State of New York,

THE DEFENDANT COMMITTED THE OFFENSES OF:

Penal Law § 155.40 (1) Grand Larceny in the Second Degree
("C" Felony)(1 Count)

IN THAT THE DEFENDANT:

Stole property in excess of fifty thousand dollars; committed a tax fraud act, with intent to evade any tax due under Chapter Sixty of the Consolidated Laws concerning Article 37 of the Tax Law, or to defraud the state or any subdivision of the state, and paid the state and/or a political subdivision of the state (whether by means of underpayment or receipt of refund or

both), in a period of not more than one year in excess of ten thousand dollars less than the tax liability that was due; and committed a tax fraud act.

THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:

1. Deponent states that he is employed as an Auditor 3 (Forensic Tax) by the New York State Department of Taxation and Finance ("DTF") and performs forensic audits and supervises Forensic Tax Auditors, including Joseph Karott, during the course of his employment. Deponent is trained in and is fully familiar with the New York State Tax Laws, including Articles 28 and 37 pertaining to, among other things, the (i) filing requirements for insurers of motor vehicles, (ii) imposition of sales tax payments on insurers who make payments to repair shops for motor vehicle repairs, and (iii) sales tax remission and return filing requirements for repair shops that received sales tax payments from insurers. Deponent further states that all registered vendors who conduct taxable sales must collect sales tax, file-sales tax returns, and remit sales tax to the DTF.

2. Deponent states that every insurer of motor vehicles that issues physical damage liability insurance for vehicles registered in New York State, which makes payments under a liability policy to service or repair of a motor vehicle on behalf of an insured person, is required to file an annual Information Return ("IR") with the DTF. When an insurer makes a payment to a repair shop for taxable motor vehicle damage repairs, it must include sales tax as a component of the repair cost. The IR provided by an insurer to the DTF includes the total amount paid by the insurer to a repair shop for each taxable year.

3. As more fully set forth below, during the relevant time periods, separately charged defendant Luis Crespo (DR-015264-20NA) ("Crespo") owned and had a controlling

beneficial interest in Broadway Towing, Inc. (“**Broadway Towing**”) which is located at or about 25 Broadway, Freeport, Nassau Country, in the State of New York.

4. Deponent states that he supervises Forensic Tax Auditor Joseph Karott (“**Karott**”), who reviewed DTF business records concerning defendant **Broadway Towing** for the time periods of December 1, 2009 to February 28, 2018. Karott’s review of these records included a review of **Broadway Towing**’s DTF-17, filed with DTF on March 26, 2007; DTF Certifications of Non-Filing of New York State Sales Tax Returns (“Certifications”) for the time periods December 1, 2008 through November 2016; New York State Third Party Database Records filed from January 2010 through October 2016; financial records including banking and check cashing records, to wit, Citibank account ending in 7141, Sabrina Check Cashing records pertaining to **Broadway Towing** and auto club company records including contracts for road side assistance services and payments made to **Broadway Towing** from Agero Administration Services Corp., Cross Country Motor Club, Pinnacle Partners Solutions, National Motor Club, LLC, and National Motor Club Partners Solutions.

5. Deponent states that he is informed by Karott that for the taxable period of December 1, 2009 to February 28, 2018, the referenced DTF-17s and/or Certifications filings list **Broadway Towing**’s physical address in Nassau County as 25 Broadway, Freeport, New York, and **Crespo** as the owner and responsible party of the corporation. Furthermore, according to DTF records, **Crespo** signed the Corporation Tax returns as its president.

6. Deponent is further informed by Karott that a review of certified Department of State (“DOS”) records indicate that **Broadway Towing** was incorporated in 2006. **Crespo** is listed on **Broadway Towing**’s Certificate of Incorporation as Incorporator.

7. Deponent is further informed by Karott that **Broadway Towing**, is a corporation registered to do business in the State of New York, is required to file sales tax returns and submit payments with said returns for all time periods during which they had taxable sales in New York State.

8. Deponent is further informed by Karott that a review of the DTF Certifications described above, for the taxable period of December 1, 2009 through February 28, 2018, reveals that no ST-100s were filed by **Broadway Towing** for the above-described period. However, the above-described financial records and third party data reveal that **Broadway Towing** had a total of \$5,414,789 in taxable sales for the aforementioned period. Therefore, defendant **Broadway Towing** failed to report \$5,414,789 in taxable sales to the DTF during the audit period of December 1, 2009 through February 28, 2018.

9. Deponent is further informed by Karott that Karott reviewed the aforementioned financial records and found that defendant **Broadway Towing** either failed to report, under reported, or failed to remit the amount of sales tax to DTF. For example, bank filings and tax filings, show: a) for December 1, 2009 to November 30, 2010, defendant failed to report and remit \$30,426 to DTF; b) for December 1, 2010 to November 30, 2011, defendant failed to report and remit \$21,348 to DTF; c) for December 1, 2011 to November 30, 2012, defendant failed to report and remit \$37,534 to DTF; d) for December 1, 2012 to November 30, 2013, defendant failed to report and remit \$37,391 to DTF; e) for December 1, 2013 to November 30, 2014, defendant failed to report and remit \$64,355 to DTF; f) for December 1, 2014 to November 30, 2015, defendant failed to report and remit \$84,598 to DTF; g) for December 1, 2015 to November 30, 2016, defendant failed to report and remit \$73,130 to DTF; h) for December 1, 2016 to November 30, 2017, defendant failed to report and remit \$95,672 to DTF;

and, i) for December 1, 2017 to February 28, 2018, defendant failed to report and remit \$22,567 to DTF.

10. Deponent is informed by Karott that, in total, for the sales tax periods covering January 1, 2010 through February 28, 2018, defendant **Broadway Towing** failed to remit \$467,025 in sales tax to DTF.

11. Deponent states that defendant and **Broadway Towing** did not have permission or authority to: (i) not to file any ST-100's with DTF; and (ii) fail to remit the above-described \$467,025 in sales tax owed to DTF for the sales tax filing period covering December 2009 to February of 2018.

**FALSE STATEMENTS MADE HEREIN ARE
PUNISHABLE AS A CLASS "A" MISDEMEANOR
PURSUANT TO PENAL LAW § 210.45**

Alan Maier
ALAN MAIER
Criminal Investigations Division
New York State Department of Taxation and Finance

11/04/2020
Date