

ORIGINAL

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FILED  
MAY 18 2016

CLERK OF THE SUPERIOR COURT  
BY *Cynthia C. Pope*

8 Attorney for Defendant  
9 FRANK C. CARSON

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF STANISLAUS

12 PEOPLE OF THE STATE OF  
13 CALIFORNIA,,  
14 Plaintiff,

15 vs.

16 FRANK C. CARSON,  
17 Defendant

) Case No.: 1490969

) DEFENDANT'S OBJECTION TO LAW  
) OFFICE  
) TELEPHONE RECORDS BEING  
) REFERENCED,  
) OR IN THE ALTERNATIVE,  
) DEFENDANT'S  
) MOTION TO QUASH SUBPOENA FOR  
) THOSE  
) RECORDS

18  
19  
20 The defendant objects to use of or reference to the phone number records of the law  
21 office of defendant. The phone numbers 209-549-0984 and 209-549-0985 have been dedicated  
22 land line phone numbers for Mr. Carson's law office for 20 years. As such, the call records  
23 concerning clients, investigators, etc. are attorney-client privileged and protected work product.  
24

25 The records were improperly obtained and should be surrendered.

26 ///

27 ///

1 I.

2 PHONE NUMBERS AND DATA CAN AND DO IDENTIFY CLIENTS,  
3 INVESTIGATORS, AND WITNESSES  
4

5 It is axiomatic that phone data, particularly in this day and age, is one of the most used  
6 and revealing aspects of communication and investigation that exists. As such, it is private and  
7 protected even for a non-lawyer.

8 A lawyer's use is all the more privacy sensitive for obvious reasons. When a proposed  
9 search extends to client files, for example, "special care must be taken to avoid unnecessary  
10 intrusion on attorney-client communications." *Fenwick & West v. Superior Court* (1996) 43  
11 CA4th 1272, 1279, 51 CR2d 294.  
12

13 Phone data is "communications." Even the name of a client is protected. *People v.*  
14 *Sullivan* (1969) 271 CA 3d 531.  
15

16 II.

17 PHONE DATA IS PRIVACY PROTECTED AND REQUIRES A  
18 SEARCH WARRANT TO OBTAIN

19 Title 18 of the United States Codes' "Telephone Records and Privacy Protection Act of  
20 2006" recognized the nature of and need for telephone records privacy.  
21

22 In 2014 the United States Supreme Court in *Riley v. California* 134 S Ct. 2473, 2485,  
23 held that officers must generally secure a warrant before conducting searches of data on cell  
24 phones.

25 A lawyer's phone record data can reveal not only client, investigator, expert, and witness  
26 identities, but the degree of contact with them, internet and electronic device searches, social  
27 media use or access, dates of communications, and other derivative information. The  
28

1 subsequent phone number called can educate as to an otherwise unknown alternative phone  
2 number, for example, of a business owner not at work. Likewise, a phone call history can lead  
3 to information on friends, acquaintances, or associates. Church affiliations, social, and political  
4 interests are all revealed by phone number call records. Phone numbers are invaluable research  
5 and snooping tools.  
6

7 III.

8 THERE HAS BEEN NO SHOWING OF GOOD CAUSE OR  
9 SWORN AFFIDAVIT DETAILING SUCH  
10

11 The essence of a search warrant application is the affidavit in support of such. The  
12 detailed reasoning and relevance put forth under penalty of perjury is what justifies the act with  
13 constitutional dimensions.  
14

15 IV.

16 A SEARCH WARRANT SHOULD HAVE BEEN SOUGHT AND  
17 APPLICATION MADE TO A SPECIAL MASTER APPOINTED  
18 BY A COURT UPON SUFFICIENT SHOWING  
19

20 Investigators knew very well that they were obtaining by subpoena duces tecum (SDT)  
21 the law office records of attorney Carson. They should have sought a search warrant to do so,  
22 but they avoided that means for the obvious reason that the numbers at issue here were those of  
23 a law office. P.C. 1525 is instructive:

24 "A search warrant cannot be issued but upon probable cause, supported by  
25 affidavit, naming or describing the person to be searched or searched for, and  
26 particularly describing the property, thing, or things and the place to be searched.  
27

28 The application shall specify when applicable, that the place to be searched

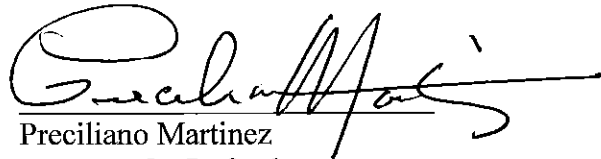


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Defendant demands surrender of any and all copies of records received for said phone numbers to defendant or Special Master appointed by the appropriate court.

Date: 5-18-16.

Respectfully submitted,



Preciliano Martinez  
Attorney for Defendant

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9 Attorney for Defendant  
10 FRANK C. CARSON  
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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16 PEOPLE OF THE STATE OF  
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19 Plaintiff,

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21 FRANK C. CARSON,  
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23 Defendant  
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) Case No.: 1490969

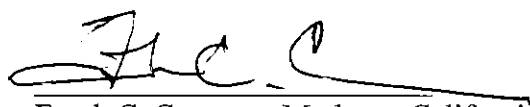
) DECLARATION OF FRANK C. CARSON

- 
1. I am, and have been, an attorney since 1988 in California.
  2. The phone numbers 209-549-0984 and 209-549-0985 have been dedicated land lines for my law office practice since 1996.

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- 3. I have considered, and represented to others, that the call records concerning clients and the work related to or on their behalf to be attorney-client privileged and protected work product.
- 4. I certify under penalty of perjury that the foregoing is true and correct.

Date: 5/18/16

  
Frank C. Carson at Modesto, California

1 **PROOF OF SERVICE**

2  
3 I declare that I am over the age of eighteen (18), not a party to the above-referenced  
4 action, and my business address is 1120 Fourteenth Street, Suite 5, Modesto. California 95354.

5 On the date shown below, I

6 \_\_\_\_\_ deposited in the United States Mail, or

7  X  personally served the following:

8 **DEFENDANT'S OBJECTION TO LAW OFFICE TELEPHONE RECORDS BEING**  
9 **REFERENCED, OR IN THE ALTERNATIVE, DEFENDANT'S MOTION TO QUASH**  
10 **SUBPOENA FOR THOSE RECORDS**

11 On the following parties:

12  
13 STANISLAUS COUNTY DISTRICT ATTORNEY  
14 832 12<sup>th</sup> Street, Room 300  
Modesto, CA 95354

15 STANISLAUS COUNTY SUPERIOR COURT  
16 801 11<sup>th</sup> Street  
17 Modesto, CA 95354

18 I declare under the penalty of perjury that the foregoing is true and correct.

19 Signed this 18 of May, 2016, at Modesto, California.

20  
21   
22 Preciliano Martinez  
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