

FILED

MAY 23 2016

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY [Signature] DEPUTY

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6 Georgia DeFilippo

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF STANISLAUS

10 PEOPLE OF THE STATE OF)
11 CALIFORNIA,)
12 Plaintiff,)
13 vs.)
14 GEORGIA DEFILIPPO,)
15 Defendant.)
16 _____ /

CASE NO.: 1490969
OBJECTION TO AND NOTICE
OF MOTION AND MOTION
TO QUASH SUBPOENA DUCES
TECUM PURSUANT TO
CCP §§ 1985-1997

Date: May 23, 2016
Time: 10:00 a.m.
Dept.: 26

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18 To: THE DISTRICT ATTORNEY OF THE COUNTY OF STANISLAUS, HER
ASSISTANTS, DEPUTIES, AGENTS AND EMPLOYEES:

19
20 PLEASE TAKE NOTICE that on May 23, 2016 or as soon thereafter as it may be heard,
21 a motion to quash the subpoena duces tecum served on Triland Acres Limited Partnership dated
22 May 17, 2016 concerning property owned by Mr. Charles Heckendorf and Ms. Georgia
23 DeFilippo jointly shall be made for the following reasons: it violated the Fourth Amendment to
24 the U.S. Constitution in seizing documents without probable cause, with an affidavit, and
25 without prior review by a neutral magistrate, it is over broad, and it may be asking for privileged
26 information. It is also untimely and irrelevant.
27

1 The motion will be based on this notice of motion, on the attached memorandum of
2 points and authorities served and filed herewith, on such supplemental memoranda of points and
3 authorities as may hereafter be filed with the court, on all the papers and records on file in this
4 action and on such oral and documentary evidence as may be presented at the hearing of the
5 motion.

6 Dated: 5-23-16

7 Respectfully submitted,
8 GARCIA, SCHNAYERSON & THOMPSON
9 ATTORNEYS AT LAW



10 JESSE J. GARCIA
11 Counsel for Georgia DeFilippo

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6 Georgia DeFilippo

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF STANISLAUS

10	PEOPLE OF THE STATE OF)	CASE NO.: 1490969
11	CALIFORNIA,)	
12	Plaintiff,)	MEMORANDUM OF POINTS AND
13	vs.)	AUTHORITIES IN SUPPORT OF
14	GEORGIA DEFILIPPO,)	MOTION TO QUASH SUBPOENA
15	Defendant.)	DUCES TECUM PURSUANT TO
16		/	CCP §§ 1985-1997
			Date: May 23, 2016
			Time: 10:00 a.m.
			Dept.: 26

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18 **STATEMENT OF THE FACTS**

19 The People are seeking to subpoena the financial records of defendant Georgia DeFilippo
20 and her brother Charles Heckendorf, Jr. involving a Stanislaus County almond and walnut
21 orchard ranch they own. The owners object on the grounds of relevancy, the request being over
22 broad, untimely and violative of privacy and rights guaranteed by the Fourth Amendment of the
23 United States Constitution. The subpoena duces tecum is also defective on its face.

24 All defendants are left to speculate as to the purpose of the subpoena other than
25 harassment, because the itmes sought have no known relevancy to any issue alleged in this
26 action.

27 Defendant submits the following points and authorities in support of the motion to quash
28 the subpoena duces tecum:

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I.

**THE SUBPOENA VIOLATES THE FOURTH AMENDMENT
AS IT SEIZES PAPER WITHOUT PROBABLE CAUSE,
WITHOUT ANY AFFIDAVIT, AND WITHOUT APPROVAL OF
A NEUTRAL MAGISTRATE**

The effect of the subpoena is to seize the papers of the subject Limited Partnership. To Seize such papers the People must comply first with the Fourth Amendment requirements. They have not, thus the subpoena must be quashed.

II.

**A COURT MAY MAKE AN ORDER QUASHING A SUBPOENA
DUCES TECUM FOR GOOD CAUSE**

Code of Civil Procedure §1987.1:

“When a subpoena requires the attendance of a witness or the production of books, documents or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by the party . . . or upon the court’s own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare.”

III.

**THE PRIVILEGE AGAINST SELF-INCRIMINATION
PROTECTS AGAINST THE PRODUCTION OF
DOCUMENTS WHERE THE ACT OF PRODUCTION
ESTABLISHES THE EXISTENCE, CUSTODY AND
AUTHENTICITY OF THE DOCUMENTS**

1 The United States Supreme Court has established that the privilege against self-
2 incrimination protects against compelled communications that are “testimonial.” *Andresen v.*
3 *Maryland* (1976) 427 U.S. 463, 470-471.

4 Defendant acknowledges that the privilege does not protect a suspect from non-
5 testimonial compulsion, such as being compelled to put on a shirt (*Holt v. United States* (1910)
6 218 U.S. 252, 253), to provide a blood sample (*Schmerber v. California* (1966) 384 U. S. 757),
7 to give a handwriting exemplar (*Gilbert v. California* (1967) 388 U.S. 263), or to provide a
8 recording of his voice (*United States v. Wade* (1967) 388 U.S. 218). Additionally defendant is
9 aware that the privilege against self-incrimination subpoenaed documents merely because they
10 contain incriminating information *Fisher v. United States* (1976) 425 U.S 391; *United States v.*
11 *Doe* (1984) 465 U.S. 605.

12 However, the production of documents in response to a subpoena duces tecum has a
13 compelled testimonial aspect where the witness thereby admits that the papers existed, were in
14 his possession or control, and were authentic. *United States v. Doe* (1984) 465 U.S. 605, 613,
15 n.11.

16 The act of production itself, therefore, or compelling the subpoenaed witness to answer
17 whether he or she has produced everything required by the subpoena duces tecum may
18 communicate information about the existence, custody, and authenticity of the subpoenaed
19 documents, which may itself be incriminating or lead to the discovery of incriminating evidence.
20 *United States v. Hubbell* (2000) 530 U.S. 27, 120 S.Ct. 2037, 147 L. Ed. 2d 24.

21 “It is apparent from the text of the subpoena itself that the
22 prosecutor needed respondents assistance both to identify potential
23 sources of information and to produce those sources. . . .The
24 assembly of literally hundreds of pages of material in response to a
25 request for ‘any and all documents reflecting, referring, or relating
26 to any direct or indirect sources of money or other things of value
27 received by or provided to’ an individual or members of his family
28 during a 3 year period. . .is the functional equivalent of the

1 preparation of an answer to either a detailed written interrogatory
2 or a series of questions at the discovery deposition. . . The assembly
3 of those documents was like being forced to surrender the key to a
4 strongbox. . . we have no doubt that the constitutional privilege
5 against self incrimination protects the target of grand jury
6 investigation from being compelled to answer questions designed
7 to elicit information about the existence of sources of potentially
8 incriminating evidence. That constitutional privilege has the same
9 application to the testimonial aspect of a response to a subpoena
10 seeking discovery of those sources. *Id.*, at 147 L.Ed. 2d 39-40.

11 Where the subpoena duces tecum in effect requires the assistance of the witness to
12 identify potential sources of information and to produce these sources, the production of
13 documents in response to the subpoena constitutes compelled testimony protected by the Fifth
14 Amendment. *United States v. Hubbell* (2000) 530 U.S. 27, 120 S.Ct. 2037, 147 L.Ed. 2d 24, 37,
15 41.

16 17 IV.

18 THE SUBPOENA DUCES TECUM IS DEFECTIVE ON ITS FACE

19 The general requirements for the issuance of subpoenas in court actions can be found in
20 CCP sections 1985-1997. Rules relating to the issuance fo criminal subpoenas can be found in
21 California PC sections 1326-1332. A subpoena Duces Tecum for records for a non-party are
22 found in CCP section 1985.3 (g).

23 Specifically, CCP 1985 (b) requires an affidavit served with a subpoena duces tecum
24 issued before trial, showing good cause for the production of the matters and things described in
25 the subpoena, specifying the exact matters or things desired to be produced, setting forth in full
26 and stating that the witness has the desired matters or things in his or her possession or under his
27 or her control.

28 No such affidavit or declaration accompanied the subpoena for the business records of

1 Triland Acres Limited Partnership. As such, the subpoena is defective on its face.

2
3 **V.**

4 **THE PEOPLE'S REQUEST IS UNTIMELY**

5 The issue of the basis for the perjury charge alleged in Count IV of the complaint has
6 been at issue since the inception of this case. The Ramey Arrest Warrant of August 13, 2015
7 does not address this charge whatsoever. The People subpoenaed defendant Carson's and Ms.
8 DeFilippo's tax records that came to the Court and remain sealed. The records were discussed b
9 the Court on October 1, 2015 (P. 81-84). An objection was raised and briefing advised
10 concerning the release of those records to the People.

11 On December 28, 2015, the People filed a memorandum in support of disclosure. While
12 citing law, there was absolutely no reason given or relevancy advanced for the records to the
13 perjury charge.

14 On January 6, 2015, the charged defendants filed a memorandum of objection to the tax
15 returns release based on privacy and lack of relevancy. The pleadings made clear that no theory
16 of relevancy had ever been disclosed by the people for records sought to the alleged crime
17 charged. The People have never responded to that pleading.

18 On December 31, 2015, defense counsel Mr. Martinez, on behalf of Mr. Carson, sent a
19 discovery demand letter asking for the discovery on Ct. IV, perjury. None was provided until
20 May 9th, 2016, two days before the scheduled hearing date of the Motion To Compel Discovery.
21 At that time the 700 Form was provided counsel in discovery; see Bates 25211-25216 attached
22 as an exhibit. There were no investigative reports provided that discuss this charge. There was a
23 January 22, 2016 assurance by the People in their written response to the discovery demand letter
24 of Mr. Martinez that they in fact had already complied with his demand for discovery on this
25 charge.

26 On May 12, 2016 (Day 73) of the preliminary hearing that began on October 13, 2015
27 with no time waiver of the in-custody defendants, the People, in discussing the lack of reports
28 discovered as to the charge, orally asserted for the first time the theory of a suspected non-

1 disclosure of an interest by Mr. Carson in his wife's and her brother's ranch on the Carson
2 campaign 700 financial disclosure form that asks ownership interests of 10% or more in business
3 and asset interests.

4
5 **VI.**

6 **NO SHOWING OF RELEVANCY**

7 There is no basis to believe that Frank Carson has any ownership interest in the Triland
8 Acres ranch, much less a 10% or greater interest that required reporting on the 700 interest
9 disclosure form. The parties are at a loss to understand any purported relevancy of the requested
10 records.

11
12 **VII.**

13 **THE SUBPOENA IS OVER BROAD**

14 "All the business records for Triland Acres Limited Partnership" as requested is over
15 broad and not particularized, and also has no time limit. The only year of interest would be 2014
16 if this is related to Mr. Carson's 700 form and his campaign for office.

17
18 **VIII.**

19 **CONCLUSION**

20 For the foregoing reasons we ask that the review, examination, or inspection or any
21 disclosure of the subpoenaed business records be barred and the financial records be kept
22 absolutely under seal.

23 Should the court entertain any thought about allowing the inspection, review, or access to
24 the subject financial records, then both Heckendorf and DeFilippo respectfully request an
25 immediate stay of any activity pending a petition of writ of mandate/prohibition.

1 Dated: _____
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Respectfully submitted,
GARCIA, SCHNAYERSON & THOMPSON
ATTORNEYS AT LAW

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5 _____
6 JESSE J. GARCIA
7 Counsel for Georgia DeFilippo

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9 TRILAND ACRES LIMITED PARTNERSHIP
10 By Charles Heckendorf, Jr.
11 Managing Partner
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF STANISLAUS

10 PEOPLE OF THE STATE OF) CASE NO.: 1490969
11 CALIFORNIA,)
12 Plaintiff,)
13 vs.)
14 GEORGIA DEFILIPPO,)
15 Defendant.)
16 _____ / Date: May 23, 2016
Time: 10:00 a.m.
Dept.: 26

- 17
- 18 1. I am a defendant in this case and the wife of Frank Carson who in solely charged
19 in Count IV of the Complaint.
 - 20 2. I am presently in the midst of the preliminary hearing for this case which demands
21 my full-time attention, and my brother is busy as well. The gathering of the
22 records sought by the subpoena will be a difficult and time-consuming task. I
23 believe it will take 30 days.
 - 24 3. Frank Carson has no ownership or financial interest in Triland Acres Limited
25 Partnership, nor does he have any interest in any profits, should there be any, that
26 the ranch may generate. The ranch was a gift to my brother and I from our mother
27 before I was ever married to Frank, and it is my sole and separate property.
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I certify under penalty of perjury that the foregoing is true and correct.

Dated: _____

Georgia DeFilippo

1 **PROOF OF SERVICE**

2 I declare under penalty of perjury that:

3 I am a citizen of the United States and am employed in the County of Stanislaus. I am
4 over the age of eighteen years and not a party to the within action. My business address is as
follows: 811 15th Street, Modesto, CA 95354.

5 On the date set forth below, I caused the attached **NOTICE OF MOTION AND**
6 **MOTION TO QUASH SUBPOENA DUCES TECUM PURSUANT TO CCP SECTIONS**
7 **1985-1997 AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
8 **MOTION TO QUASH SUBPOENA DUCES TECUM PURSUANT TO CCP SECTIONS**
9 **1985-1997 and DECLARATION OF GEORGIA DEFILIPPO IN SUPPORT OF MOTION**
10 **TO QUASH SUBPOENA DUCES TECUM** to be served on the parties to this action as
follows:

11 BY MAIL-

12 I placed a true copy thereof, enclosed in a sealed envelope with postage thereon fully
13 prepaid, in the United States mail at Modesto, California, addressed to the parties as set
forth on the attached service list. C.C.P. §§1013 (a), 2015.5.

14 BY FEDERAL EXPRESS

15 I retained Federal Express to personally serve a true copy thereof on _____ on the parties
16 as set forth on the attached service list. C.C.P. §§1013 (c), 2015.5.

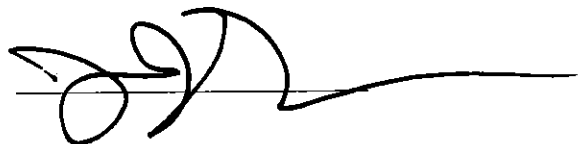
17 BY FACSIMILE TRANSMISSION-

18 I am readily familiar with this law firm's business practices for collection and processing
19 of documents by way of facsimile. I telefaxed a true copy thereof at said facsimile
number (s) as set forth on the attached service list. C.C.P. §§1013 (e), 2015.5 and C.R.C.
§2008.

20 BY PERSONAL SERVICE-

21 I personally served a true copy thereof on the parties as set forth on the attached service
22 list. C.C.P. §§1011, 2015.5.

23 Executed on May 23, 2016 at Modesto, California.

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1 Re: **People of the State of California v. Frank Carson, et al.**, STANISLAUS County Superior
Court Case No.: 1490969

2 **SERVICE LIST**

3
4
5 Chief Deputy District Attorney
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6 County of Stanislaus
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Telephone: (209)525-5550
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9 Preciliano Martinez
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