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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY _____

1 BIRGIT FLADAGER
2 District Attorney
3 Stanislaus County
4 832 12th Street, Suite 300
5 P.O. Box 442
6 Modesto, CA 95353
7 Telephone: (209) 525-5550
8 Facsimile: (209) 558-4027

9 Attorney for the Plaintiff

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

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

14 vs.

15 **FRANK CLIFFORD CARSON,**
16 **BALJIT ATWAL,**
17 **DALJIT ATWAL,**
18 **WALTER WESTLEY WELLS,**
19 **GEORGIA DEFILIPPO,**
20 **CHRISTINA DEFILIPPO,**
21 **EDUARDO QUINTANAR AND**
22 **SCOTT MCFARLANE,**
23 Defendants.

CASE NO.: 1490969

OPPOSITION TO DEFENDANTS
CARSON'S AND G. DEFILIPPO'S
OBJECTION TO AND NOTICE OF
MOTION TO QUASH SUBPOENA
DUCES TECUM PURSUANT TO
C.C.P. §§ 1985-1987

Date: TBD
Time: 9:30 a.m.
Dept. 26
The Honorable Barbara Zúñiga

24 Comes now the People of the State of California, by and through their attorney, BIRGIT
25 FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy
26 District Attorney, and respectfully submits the following opposition in response to the defendant's
27 objection to and notice of motion and motion to quash subpoena duces tecum pursuant to C.C. P.
28 §§ 1985-1987 regarding subpoenas served on Acacia Memorial Park and Triland Acres Limited
Partnership.

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I.

INTRODUCTION

A criminal subpoena need not be accompanied by an affidavit supported by good cause. Defendant Carson is charged with a violation of Penal Code §118(a), perjury, for in the language of the complaint, “misrepresentation of Form 700.” Defendant received notice of this charge on August 18, 2015 wherein the People filed a Complaint. An Amended Complaint filed on October 19, 2015 also referenced the charge in Count IV. Due to marriage, defendant G. DeFilippo’s finances cannot be separated from defendant Carson’s finances in a community property state and were not reflected on defendant Carson’s Form 700, although the form called for the financial information of the defendant’s spouse. Defendant G. DeFilippo’s attempt to argue privilege as to business records of a limited liability partnership also falls short in supporting a motion to quash the subpoena.

II.

STATEMENT OF FACTS

On May 17, 2016, the People subpoenaed Acacia Memorial Park for the lender documents involved in the properties of 1026 McHenry Avenue and 8319 E. Monte Vista Avenue, parcels owned by defendant Carson. On that same date, the People subpoenaed the business records of Triland Acres Limited Partnership. The documents contained by these organizations relate to the parcels named and statements made within the defendant’s 2014 California Form 700, wherein defendant Carson committed perjury.

III.

**THE PENAL CODE AND CASE LAW PROVIDE THE STANDARDS FOR
ENFORCEMENT OF THE SUBPOENA POWER IN CRIMINAL
MATTERS**

Penal Code §1326 provides,
(a) The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by any of the following:

..

1 (2) The district attorney, his or her investigator, or, upon request of the grand jury,
2 any judge of the superior court, for witnesses in the state, in support of an
3 indictment or information, to appear before the court in which it is to be tried.

4 (3) The district attorney or his or her investigator, the public defender or his or her
5 investigator, or the clerk of the court in which a criminal action is to be tried. The
6 clerk shall, at any time, upon application of the defendant, and without charge, issue
7 as many blank subpoenas, subscribed by him or her, for witnesses in the state, as
8 the defendant may require.

9 ...
10 (b) A subpoena issued in a criminal action that commands the custodian of records
11 or other qualified witness of a business to produce books, papers, documents, or
12 records shall direct that those items be delivered by the custodian or qualified
13 witness in the manner specified in subdivision (b) of Section 1560 of the Evidence
14 Code. Subdivision (e) of Section 1560 of the Evidence Code shall not apply to
15 criminal cases.

16 Penal Code §1327 provides a form by which a subpoena must be written. The form
17 includes a date to appear before the requisite court, the signature of the issuing court, attorney,
18 investigator and/or clerk and whether books or documents are required with a requirement to
19 describe the requested documents.

20 “[I]t has long been held that civil discovery procedure has no relevance to
21 criminal prosecutions. (*Powell v. Superior Court* (1957) *supra*, 48 Cal.2d 704, 707-
22 708; *Yannacone v. Municipal Court* (1963) 222 Cal.App.2d 72, 74-75 ; *Clark v.*
23 *Superior Court* (1961) 190 Cal.App.2d 739, 742-743; *People v. Wilkins* (1955) 135
24 Cal.App.2d 371, 377-378; *People v. Ratten* (1940) 39 Cal.App.2d 267, 271;
25 *Gonzales v. Superior Court* (1935) 3 Cal.2d 260, 263.) Chief Justice Traynor
26 reaffirmed this dichotomy in *Shively v. Stewart* (1966) 65 Cal.2d 475, 479, when
27 he wrote: “We are committed to the wisdom of discovery, by statute in civil cases
28 (Code Civ. Proc., §§ 2016-2036), and by common law in criminal cases.”
Legislative silence on criminal discovery, he noted, means that it has left to the
courts the adaptation of common law concepts. More recently this court in *Hill*
unequivocally declared that criminal discovery is an inherent power of the court “in
the absence of legislation” (10 Cal.3d at p. 816). While civil discovery in general
is as old as our Code of Civil Procedure, Witkin observes that the “California law
of discovery in criminal cases is a creation of the courts dating back only a few
years.” (Witkin, Cal. Criminal Procedure (1963) p. 265.)”

(*Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 536.)

Following *Pitchess*, the Court of Appeal in *Fabricant v. Superior Court* (1980) 104
Cal.App.3d 905, 915, found, “Code of Civil Procedure sections 1987.1 and 1987.2 apply only in
civil matters.” (*Cf. Michael B. v. Superior Court* (2002) 103 Cal.App.4th 1384.)

1 Defendant Carson's and G. DeFilippo's reliance on sections of the California Code of Civil
2 Procedure is mislaid as defendant Carson and G. DeFilippo are charged with criminal offenses and
3 stand before a criminal tribunal.

4
5 **IV.**

6 **THERE IS NO RIGHT TO PRIVACY IN BANK RECORDS**

7 Article I, section 28 of the California Constitution provides that relevant evidence
8 shall not be excluded except where federal constitutional guarantees or state
9 statutory privileges require exclusion. The federal Constitution does not create a
10 right of privacy for bank records. (*United States v. Miller* (1976) 425 U.S. 435,
11 442-443, 96 S.Ct. 1619, 1623-1624, 48 L.Ed.2d 71.) Nor does the Financial
12 Privacy Act establish a statutory *privilege* as Article I, section 28 uses that term; it
13 merely institutes a *procedure* regulating the circumstances under which bank
14 records will be disclosed. (*People v. Gibson* (1987) 195 Cal.App.3d 841, 853-854.)
15 (*People v. Huston* (1989) 210 Cal.App.3d 192, 222-23.)

16 The California right to the Financial Privacy Act establishes a statutory *procedure*
17 for the disclosure of financial information. It does not create a statutory privilege.
18 (See *People v. Hole* (1983) 139 Cal.App.3d 431, 438.) Proposition 8 thus abrogated
19 the exclusion of evidence in criminal proceedings under Government Code section
20 7489. The evidence is thus inadmissible only if it is prohibited by the United States
21 Constitution. (*People v. Neer* (1986) 177 Cal.App.3d 991, 998.)

22 The federal law was established in *United States v. Miller* (1976) 425 U.S. 435.
23 The United States Supreme Court held that there is no constitutional expectation of
24 privacy interest of a depositor in the bank records of his accounts. Bank records are
25 not confidential. (*Id.* at pp. 441-443.)
26 (*People v. Gibson* (1987) 195 Cal.App.3d 841, 853-54.)

27 In *People v. Slaton* (1990) 222 Cal.App.3d 1041, the Fifth District Court of Appeals
28 reviewed a defendant's claim of Fourth Amendment privacy interest in documents submitted to
institutional lenders to refinance loans. Relying on the holdings in *Miller, supra*, the *Slaton* Court
found, "A potential borrower must assume the risk that the information he offers a lender, in
support of a loan application, will be conveyed by the lender to the government." (*Id.* at p. 1047.)

1 Defendant Carson submitted documentation to Acacia Memorial Park to secure financing
2 for the properties at 1026 McHenry Avenue and 8319 East Monte Vista Avenue. Similar to the
3 cases of *Huston, Gibson, Miller and Slaton*, defendant Carson does not have a reasonable
4 expectation of privacy in the records he provided to Acacia Memorial Park.

5
6 V.

7 **TRILAND ACRES' COMPLIANCE WITH THE SUBPOENA DUCES**
8 **TECUM WILL NOT VIOLATE DEFENDANT GEORGIA DEFILIPPO'S**
9 **FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION**

10 Subdivision (e) of Cal. Corporations Code § 15901.16 provides,

11 In addition to any other discovery rights which may exist, in any case pending in a
12 California court having jurisdiction in which a party seeks records from a
13 partnership formed under this chapter, whether or not the partnership is a party, the
14 court shall have the power to order the production in California of the books and
15 records of the partnership on the terms and conditions that the court deems
16 appropriate.

17 In defendant's referenced case of *U.S. v. Doe* (1984) 465 U.S. 605, the United States
18 Supreme Court reviewed a case resolve by the Court of Appeal which explicitly referenced the
19 case of *Bellis v. United States* (1974) 417 U.S.85, 94, for the notion "that an individual may not
20 assert the Fifth Amendment privilege on behalf of a corporation, partnership or other collective
21 entity." In *Bellis*, the United States Supreme Court specifically held, "It is well settled that no
22 privilege can be claimed by the custodian of corporate records, regardless of how small the
23 corporation may be." (*Bellis v. U. S.* (1974) 417 U.S. 85, 100 citing *Grant v. United States*, (1913)
24 227 U.S. 74; *Fineberg v. United States*, (9th Cir. 1968) 393 F.2d 417, 420; *Hair Industry, Ltd. v.*
25 *United States* (2nd Cir. 1965), 340 F.2d 510; cf. *George Campbell Painting Corp. v. Reid* (1968)
26 392 U.S. 286.) (See also *U.S. v. Sourapas* (9th Cir. 1975) 515 F.2d 295, 299.) The *Bellis* Court
27 went on to further recognize, "Every State has now adopted laws permitting incorporation of
28 professional associations, and increasing numbers of lawyers, doctors, and other professionals are
choosing to conduct their business affairs in the corporate form rather than the more traditional

1 partnership. Whether corporation or partnership, many of these firms will be independent entities
2 whose financial records are held by a member of the firm in a representative capacity. In these
3 circumstances, the applicability of the privilege should not turn on an insubstantial difference in
4 the form of the business enterprise.” (*Id.* at p. 100-01.)

5 Triland Acres Limited Partnership is a limited partnership incorporated within the state of
6 California. Therefore, under the Cal. Corporations Code, Triland Acres Limited Partnership
7 records may be produced even in matters where the limited partnership is not a party. Defendant
8 is not listed as the agent of process and was not the party served with the subpoena for the Triland
9 Acres Limited Partnership. Defendant G. DeFilippo, as held in *Bellis*, cannot claim privilege in
10 the records of a limited partnership.

11 Defendant G. DeFilippo relies on the holding in *U.S. v. Hubbell* (2000) 530 U.S. 27 to
12 support her argument that “The Privilege against Self-Incrimination Protects against the
13 Production of Documents where the Act of Production Establishes the Existence, Custody and
14 Authenticity of the Documents.” (Defense motion, p. 4.) In the case of *Hubbell*, the government
15 subpoenaed Mr. Hubbell’s tax returns with the proviso that his production would be provided use
16 immunity. Following Mr. Hubbell’s production, the government charged him with tax evasion
17 and related crimes. Mr. Hubbell argued his fifth amendment rights were violated as his production
18 of the documents was incriminatory. The United States Supreme Court agreed.

19 The subpoena to Triland Acres Limited Partnership was not served on defendant Georgia
20 DeFilippo, but on Charles Heckendorf, who is the party required to produce the documents.
21 Therefore, the subpoena does not require defendant to produce documents that will implicate her
22 in Count IV in the charge of perjury, which is solely alleged against her spouse, defendant Frank
23 Carson.

24 **A. Defendant Carson’s Application of *Andresen v. Maryland* Fails**

25 In *Andresen v. Maryland* (1976) 427 U.S. 463, the Court found it improper to compel an
26 individual to produce the documentation equating the act to compelling the individual to testify.
27 The subpoena served on Acacia Memorial Park on May 17, 2016 does not require defendant
28 Carson to produce anything and thus his reference to *Andresen* fails. Similarly, defendant

1 DeFilippo's argument regarding the subpoena also fails as the subpoena was served on Charles
2 Heckendorf for the business records of Triland Acres Limited Partnership.

3
4 **VI.**

5 **DEFENDANT CARSON WAIVED HIS RIGHT TO PRIVILEGE OVER**
6 **HIS TAX RETURNS**

7 In defense's cited case of *Weingarten v. Superior Court* (4th Dist. 2002) 102 Cal.App.4th
8 268, 274 the Court held the tax privilege will not be upheld in either of the following situations:
9 "(1) the circumstances indicate an intentional waiver of the privilege; (2) the gravamen of the
10 lawsuit is consistent with the privilege; or (3) a public policy greater than that of the confidentiality
11 of tax returns is involved." (See also *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 721.)

12 Following the case of *Weingarten*, the Second District Court of Appeal identified cases
13 which upheld an intentional relinquishment of the privilege: *Crest Catering Co. v. Superior Court*
14 (1965) 62 Cal.2d 274 and *In re Marriage of Parks* ("Parks") (1982) 138 Cal.App.3d 346.
15 (*Fortunato v. Superior Court* (2003) 114 Cal.App.4th 476.) In *Fortunato*, the court did not uphold
16 the argument that a petitioner's submission of his personal tax returns to a bank was a
17 relinquishment of his privilege. *Id.* However, in *Crest Catering*, the California Supreme Court
18 found an employer's promise to provide payroll information in an action by the union was an
19 intentional waiver and the *Parks* court found an agreement between spouses to furnish financial
20 information to each other was an intentional waiver. (*Id.* at p. 479-480.)

21 In 2014, defendant Carson ran for public office in an attempt to cover up the murder of
22 Korey Kauffman and his ongoing conspiracy to obstruct justice. As a part of his campaign,
23 defendant Carson completed a California Form 700, a self-entitled Public Document, which was
24 filed with the Elections Division at the Stanislaus County Clerk-Recorder's Office on March 5,
25 2014. Within the form, defendant listed investments, properties, retirement accounts, etc.
26 Defendant's actions in 2014 intentionally waived his privilege to his financial information with
27 his election campaign in 2014 similar to the cases of *Crest Catering* and *Parks*. In their previously
28 filed "Memorandum of Points and Authorities Supporting Release of Defendant Carson's Tax

1 Returns filed on December 28, 2015, the People argued the public policy exception to the privilege
2 stated in *Weingarten*. The People maintain these two exceptions to the privilege render
3 defendant's argument meritless.

4
5 **A. Defendant Carson Has the Burden to Show Property Owned by His**
6 **Spouse and Co-Defendant Is Not Community Property**

7 In defendant's case of *Weingarten, supra*, the Court also reviewed defendant's assertion
8 that she had no interest in her spouse's separate property incorporated within their joint tax return.
9 (*Weingarten, supra*, 102 Cal.App.4th at p. 277.) However, the *Weingarten* court noted defendant
10 failed to show she lacked interest in her spouse's separate property. The Court specifically held,
11 "The record shows the couple has been married for more than 40 years. Under California law, all
12 property acquired by a married person during marriage is **presumed to be community property**,
13 and a party claiming separate property has **the burden of rebutting the presumption by clear**
14 **and convincing evidence.**" (*Id.* citing Family Code section 760, *Gagan v. Gouyd* (1999) 73
15 Cal.App.4th 835, 843.) The *Weingarten* court denied defendant's attempt to incorporate her
16 deposition testimony of an oral agreement that the assets of her spouse and her were separate. The
17 court stated defendant "failed to produce any written evidence of the claimed agreement." (*Id.* at
18 p. 278.)

19 Defendant Carson asserts there "is no basis to believe he has any ownership interest in the
20 Triland acres ranch." (Defense motion, p. 8, lines 5-6.) Yet, defendant Carson and G. Defilippo
21 are married and live in the state of California. As noted in *Weingarten*, the presumption is the
22 property is community property and defendant Carson and G. DeFilippo bear the burden of
23 rebutting the presumption, not the People of the State of California.

24
25 **VII.**

26 **NO EVIDENCE IS ADMISSIBLE EXCEPT RELEVANT EVIDENCE**

27 (Cal. Evid. Code §350)

28 Cal. Evid. Code §210 provides, " 'Relevant evidence mean evidence, including evidence

1 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove
2 or disprove any disputed fact that is of consequence to the determination of the action.

3 On August 18, 2015, defendant was charged in a complaint with perjury as to Count IV for
4 misrepresentation in Form 700. Defendant's financial condition with respect to his filing and the
5 veracity in statements made in Form 700 are relevant to defendant's charges.

6
7 **B. The Subpoena Duces Tecum Is Timely**

8 The People are continuing to present their case during preliminary hearing. Defendant was
9 noticed of the charge on August 18, 2015 and this discovery has occurred at least 30 days before
10 trial pursuant to Penal Code §1054.7. As in most of defendant's arguments, this argument
11 regarding timeliness is not supported by statute or case law.

12
13 **VIII.**

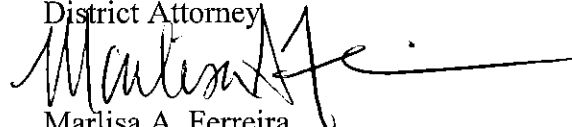
14 **CONCLUSION**

15 For the foregoing reasons, the People respectfully request the Court deny defendant's
16 objection and/or motion to quash subpoenas served on Triland Acres Limited Partnership and
17 Acacia Memorial Park.

18 Dated this 17 day of June 2016, at Modesto, California.

19 Respectfully submitted,

20 BIRGIT FLADAGER
21 District Attorney

22 
23 Marlisa A. Ferreira
24 Chief Deputy District Attorney

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26
27
28 MAF/vav

1 **PROOF OF SERVICE BY ELECTRONIC MAIL**

2
3 STATE OF CALIFORNIA)

4 COUNTY OF STANISLAUS)

5
6 I, the undersigned, declare as follows:

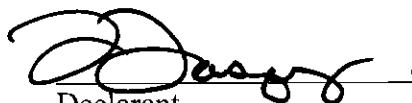
7 That I am over the age of 18 years and am not a party to this action and I am employed
8 by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto,
9 California.

10 That I served a copy of the Opposition to Defendant's Objection to and Notice of Moiton
11 and Motion to Quash Subpoena Duces Tecum pursuant to CCP §§1985-1997 regarding Acacia
12 Memorial Park and Triland Acres Limited Partnership to June 9, 2016 pursuant to Cal. Civ.
13 Proc. Code § 1010.6(a)(6) by electronically sending a copy thereof to the offices of:

14 Jesse Garcia at JesseJGARCIA@aol.com,
15 Timothy Rien at rienlaw@sbcglobal.net,
16 Martha Carlton-Magana at carltnm@hotmail.com,
17 Preciliano Martinez at attymartinezp@yahoo.com,
18 Hans Hjertonsson at Hans.hjertonsson@gmail.com,
19 Alonzo Gradford at gradfordlaw@gmail.com,
20 Lawrence Niermeyer at ltniermeyer@aol.com,
21 Robert Lee Forkner at RLFCrimLaw@aol.com,
22 Bruce Perry at brucerperry@msn.com and
23 Stephanie Mitchell at stephanie.mitchell@stanct.org.

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

25 Executed this 9th day of June 2016, at Modesto, California.

26 
27 Declarant

28 Case No. 1490969
People v. Carson et al.