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COUNTY OF STANISLAUS

*Ana Valencia*

LAW OFFICE OF MOORAD, CLARK & STEWART  
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Attorneys for SCOTT MCFARLANE

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF STANISLAUS

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THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

FRANK CLIFFORD CARSON, BALJIT  
ATWAL, DALJIT ATWAL, WALTER  
WESTLEY WELLS, GEORIA DEFLIPPO,  
EDWARD QUINTARA, SCOTT  
MCFARLANE AND CHRISTINA  
DEFLIPPO,

Defendants.

No. 1490969

DECLARATION OF ADAM  
STEWART IN OPPOSITION TO  
REQUEST FOR ORDER TO RELEASE  
COMPELLED INTERNAL AFFAIRS  
STATEMENTS

Dept.: 26  
Honorable Barbra Zuniga

To The Honorable Barbra Zuniga Judge Presiding and the People of the State of  
California through the Stanislaus County District Attorney, Marlisa A. Ferreira, Defendant  
SCOTT MCFARLANE, (hereinafter "MCFARLANE"), hereby submits the following  
Declaration of Adam J. Stewart in Opposition to the People's Declaration and Order for  
Release of Compelled Statements Made in the Course of Internal Affairs Investigation.

I, ADAM J. STEWART declare as follows:

1           1.       That I am an attorney at law duly licensed to practice law before all the courts  
2 of the State of California and Co-Counsel for Defendant SCOTT MCFARLANE in the above  
3 entitled matter. I have personal knowledge of the facts contained herein and if called upon to  
4 testify to these facts, I could and would competently do so.

5           2.       That I offer this Declaration in lieu of personal testimony, pursuant to Sections  
6 2009 and 2015.5 of the California Code of Civil Procedure and in response to the Declaration  
7 of Jeffrey M. Laugero.

8           3.       That SCOTT MCFARLANE is a current officer of the California Highway  
9 Patrol.

10          4.       That on September 11, 2015, I attended and represented Mr. MCFARLANE  
11 within the California Highway Patrol Internal Affairs interrogation of Mr. MCFARLANE.  
12 During this interrogation Mr. MCFARLANE provided a "compelled" statement pursuant to  
13 *Lybarger v. City of Los Angeles*, (1985) 40 Cal.3d 822.

14          5.       That to date, I have not received a transcript of the interrogation.

15          6.       That the instant Request and Order by the People is premature and based  
16 purely on speculation that Mr. MCFARLANE may testify at the preliminary examination.

17          7.       That it is Defendants' intention to call a limited number of witnesses including  
18 Robert Lee Woody, Victoria McFarlane, Captain Malkeit Samra CHP, and Stanislaus County  
19 Deputy Barringer.

20          8.       That the testimony of the People's witnesses together with the above witness  
21 will be determinative as to whether or not Mr. MCFARLANE will be called to testify.


22          9.       As the sole purpose and statutory authorization for producing the interrogation  
23 transcript is the "impeachment" of Mr. MCFARLANE'S testimony, Cal. Govt. Code §  
24 3303(f)(3), the People are not entitled to receive and/or review the interrogation transcript  
25 until such time Mr. MCFARLANE actually testifies. Absent from Mr. Laugero's Declaration  
26 is any authority, statute or case law, that would allow the premature disclose of the statutorily  
27 protected statement. In fact, an Order from this Court to provide The People with the  
28

1 transcript prior to Defendant's testimony, would violate the specific rights that the Legislature  
2 intended to protect when enacting Cal. Govt. Code § 3303.

3 10. Any Order for a copy of the interrogation transcript should specifically limit  
4 its delivery to the Court where it would remain sealed, pending testimony by Mr.  
5 MACFARLANE.

6 11. That following testimony by Mr. MCFARLANE, the interrogation transcript  
7 could be provided to The People after *in camera* review for determination as to whether or  
8 not the compelled statement, i.e., interrogation transcript, would serve to impeach Mr.  
9 MCFARLANES' testimony. California Government Code § 3303(f)(3).

10  
11 DATED: 09/23/15

  
ADAM J. STEWART  
Attorney for Defendant

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**PROOF OF SERVICE BY ELECTRONIC MAIL**

**STATE OF CALIFORNIA**        )  
**COUNTY OF STANISLAUS**    )

I am employed in the County of Stanislaus, State of California. I am over the age of eighteen and am not a party to the within action. My business address is: 1020 15th Street, Suite 10, Modesto California. On September 23, 2015, I served the following document(s):

**DECLARATION OF ADAM STEWART IN OPPOSITION TO REQUEST FOR ORDER TO RELEASE COMPELLED INTERNAL AFFAIRS STATEMENTS**

in this action, pursuant to California Code of Civil Procedure section 1010.6(a)(6) by electronically sending a copy thereof to the offices of Stanislaus County District Attorney, Marlisa A. Ferreira at [marlisa.ferreira@standa.org](mailto:marlisa.ferreira@standa.org), Timothy Rien at [rienlaw@sbcglobal.net](mailto:rienlaw@sbcglobal.net), Tim Allen Pori at [tim@defense-attorney-pori.com](mailto:tim@defense-attorney-pori.com), Martha Carlton-Magana at [carltnm@hotmail.com](mailto:carltnm@hotmail.com), Preciliano Martinez at [attymartinez@yahoo.com](mailto:attymartinez@yahoo.com), Hans Hjertonsson at [Hans.hjertonsson@gmail.com](mailto:Hans.hjertonsson@gmail.com), Alonzo Gradford at [gradfordlaw@gmail.com](mailto:gradfordlaw@gmail.com), Ryan Roth at [rroth@Roth-Legal.com](mailto:rroth@Roth-Legal.com), Stephanie Mitchell at [Stephanie.mitchell@stanct.org](mailto:Stephanie.mitchell@stanct.org), and Bruce Perry at [bruceperry@msn.com](mailto:bruceperry@msn.com).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 23, 2015, at Modesto, CA.

  
LAWRENCE T. NIERMEYER