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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.

18) CASE NO.
19) 1490969
20)
21) DECLARATION OF PRECILINAO
22) MARTINEZ IN SUPPORT OF MOTION
23) TO RECUSE STANISLAUS COUNTY
24) DISTRICT ATTORNEY
25)
26) DATE : October 1, 2015
27) TIME: 10:00 a.m.
28) DEPT.: 26

19 Mr. Carson has practiced criminal law in Stanislaus County for 25 years. He has one of
20 the largest criminal case loads (70-80) in the county and a number of those cases are homicide
21 related. Mr. Carson has tried a number of trials (approx. 100-200) and has had one of the best
22 acquittal records of any criminal defense attorney in the county if not the best. In 2013, for
23 example, Mr. Carson tried 2 murder trials in this county and both resulted in acquittals (People
24 v. Michael Hoyt, People v. Jakari Phyll). In 2014 in the murder trial of People v. Richard
25 Jolly the Stanislaus County District Attorney (here after SCDA) settled the case against him
26 very favorably in trial after Mr. Carson's opening statement. In 2015 in the murder trial of
27 People v. Juan Manual Tello Mr. Carson dead locked the jury (7-5) requiring a retrial be
28

FILED
SEP 25 2015
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY *[Signature]*

1 scheduled. That retrial was scheduled to begin a few days after the day Mr. Carson was
2 arrested on August 14, 2015. His office had developed evidence since the mistrial in June that
3 he believes will result in his complete acquittal at the retrial. Earlier in 2015, in a highly
4 published and bitterly contested sex offense jury trial (People v. Frank Drummond) Mr. Carson
5 secured a defense verdict (11-1, dismissed) that was denounced by the SCDA to the news
6 media (Modesto Bee) as being forced by his aggressive examination of prosecution witnesses.
7

8 In other high profile cases that were politically motivated, Mr. Carson defended the
9 former mayor of Modesto (People v. Carmen Sabatino) against corruption charges and he was
10 exonerated after a lengthy jury trial with no convictions. The investigator in that case was Kirk
11 Bunch who engaged in unethical and illegal behavior and suborned perjury. Mr. Carson
12 denounced him throughout the trial and in the years since for his misconduct. Mr. Carson has
13 since 2006 sworn affidavits attesting to his dishonesty and misconduct. Kirk Bunch is one of
14 the two principal investigators in Mr. Carson's present prosecution. Mr. Carson has been told
15 by witnesses and suspects in this case that he has told them if they'd just "give up" Carson all
16 their problems would go away. In a trial conducted in 2014(People v. A.J. Pontillo) alleging
17 kidnapping, conspiracy, and theft by a bail bondsmen, Pontillo had been a vocal critic of the
18 SCDA and the Sheriff. He had denounced them on social media, state bar complaints, and to
19 the civil grand jury. The investigation was overseen by SCDA Chief Deputy Dave Harris.
20 After a bitterly fought jury trial in which Mr. Carson mocked Harris and Steve Jacobson
21 throughout for unethical and dishonest behavior, the jury after a 6 month long trial acquitted
22 him of all charges, including those that exposed him to 4 life sentences.
23

24 Midway through the trial approximately ½ of the allegations of misconduct were
25 dismissed by the trial judge for violations of Brody discovery due process. In meeting with the
26 jurors after the verdict they recounted being approached by the SCDA investigator Jacobson
27
28

1 before verdicts were reached and made comments calculated to influence the jury. While doing
2 so a jury commissioner approached and demanded he cease. Jacobson then lied to the jury
3 official and said it was unrelated to the trial.
4

5 After that humiliating defeat, in January 2015, when before the trial judge on return of
6 evidence issues Mr. Carson disclosed to the court what he had learned demanded contempt be
7 found against Jacobson and Harris for the attempt to tamper with the jury and newly-
8 discovered Brady evidence violations that occurred during the trial. Harris misrepresented to
9 the court that the contacts happened after the verdicts and that since the defendant was
10 acquitted it didn't matter. He said he thought the jury members approached were alternates so
11 that's why he refused to inform the court and counsel of the unauthorized and inappropriate
12 contact.
13

14 The trial court has subsequently brought criminal contempt charges against Harris and
15 Jacobson for their misconduct. Mr. Carson has testified both live and by declaration and he is
16 the chief prosecution witness against them. Mr. Carson's testimony is pending as a rebuttal
17 witness to their defenses which they have yet to tender. They face jail, fines, loss of jobs, and
18 sanction by the state bar for Harris.
19

20 Mr. Pontillo has brought suit against them and Stanislaus County for the actions of the
21 SCDA and Sherriff.
22

23 In 2010 Mr. Carson was assaulted by SCDA investigator Jacobson in a hallway of the
24 county courthouse, he placed him under citizen's arrest and had him disarmed by bailiffs. Mr.
25 Carson filed a lawsuit against him and a jury trial was scheduled for August 11, 2015, 3 days
26 before his arrest. The trial was vacated the day before with no explanation. It has since been
27 learned the judiciary had been informed of Mr. Carson's imminent arrest. The suit was against
28 Jacobson and Stanislaus County (SCDA) and sought damages and financial liability. Liability

1 is clear due to witnesses and admissions. Mr. Carson believes his arrest was triggered by the
2 fear of his expected success in that trial, along with his starting the Tello trial next week.

3 Since the early 1900's Mr. Carson has been a frequent and vocal critic of the SCDA's
4 office and their staff. Both in pleading and oral argument Mr. Carson has denounced their
5 tactics, motives, dishonesty and ethics. Mr. Carson has practiced in numerous other
6 jurisdictions and know this to be true, as well as being told by staff members themselves. Mr.
7 Carson cited them for being dishonest "jack-booted" thugs and bullies for example. He learned
8 in the early 1900's that Birgit Fladager, the present District Attorney, went to office members
9 soliciting examples of him being argumentative with judges and "defaming police officers on
10 the stand." Under her direction a complaint was made to the state bar with this kind of
11 nonsense and Mr. Carson had to respond which he easily did and was not sanctioned in any
12 way. The SCDA has filed other such bar complaints with the same results.

13
14
15 Mr. Carson has filed state bar complaints over the years on both Dave Harris and Birgit
16 Fladager. Mr. Carson is a state bar certified Criminal Law Specialist and a past president of the
17 Stanislaus County Criminal Courts Bar Association, which is composed of defense attorneys.
18 He has exhorted the defense bar to aggressively counter the SCDA on inappropriate tactics and
19 positions.
20

21
22 In keeping with his unrelenting criticism of the SCDA and Birgit Fladager in particular,
23 Mr. Carson was a major donor to her opponent in that election and campaigned for him. Sadly
24 he lost and she ran unopposed in 2010. In November 2013 Mr. Carson took out papers to run
25 for the office of District Attorney himself. In a hard fought campaign that ended in June 2014,
26 Mr. Carson debated her in several forums, on radio, T.V., and public meetings; including
27 several times before the County Board of Supervisors. That body controls the budget of the
28 SCDA and Mr. Carson exposed corruption, flawed priorities, and terrible morale within the

1 office because of the climate of fear and intimidation with which the office is ruled. Mr.
2 Carson advocated reducing the number of investigators and questionable prosecutions and
3 increase the number of prosecutors to take care of backlog and delayed resolutions. Mr. Carson
4 had campaign signs posted throughout the county. In the election Mr. Carson received
5 approximately 1/3rd of the vote (over 10,000) against the incumbent. She was forced to spend
6 over \$100,000 more than Mr. Carson spent to retain her job. Mr. Carson announced then and
7 have since, his intention to run again in the next election and win, no longer a political novice.
8

9 During the election Mr. Carson's opponent went so far as to have scores of members of
10 her office on a workday pose on the courthouse steps in support of her candidacy with their
11 names listed. Included in the photo, representing himself as a SCDA employee was Jon Evers,
12 a Modesto Police Dept. detective. Evers assisted Kirk Bunch and Steve Jacobson throughout
13 this investigation, and is instrumental in this prosecution. That misrepresentation is itself, in
14 my opinion, a violation of election law.
15

16 The election campaign including Mr. Carson calling a news conference in the courtyard
17 of the county government building at 1010 10th St. Modesto, and exposing that Birgit
18 Fladager's Chief of investigators Aaron Gallagher had been fired for tipping off a crony and
19 informant David Nelson of an imminent federal search warrant authorized search of him.
20 Nelson thus alerted was able to move an assault weapon that Gallagher had provided him.
21 Nelson explained this to investigators in the prosecution of A.J. Pontillo. Nelson went to
22 federal prison on drug charges. Fladager interceded with federal prosecutors, Mr. Carson was
23 told, to avoid Gallagher's indictment on federal charges.
24

25 On or about August 9, 2012, after business hours, investigators Kirk Bunch, Jon Evers,
26 and Frank Navarro, barged into Mr. Carson's office through a door unlocked for a workman
27 entering with a ladder. They had no warrant or authorization to be there. Mr. Carson ordered
28

1 them to leave and they refused despite his insistence. Mr. Carson called 911 and asked for
2 MPD to arrest them . Evers walked outside in compliance to his demand. To responding
3 officers Mr. Carson signed an arrest demand. This was an effort to harass his wife and Mr.
4 Carson and intimidate them. His wife especially was upset by their demeanor and behavior;
5 saying Mr. Carson hadn't talked to them and it was only going to get worse for them. This
6 lengthy intrusion in Mr. Carson's office and refusal to vacate his property; including Mr.
7 Carson seeing them looking at the outgoing mail on the front desk by the door. Mr. Carson had
8 earlier that day been on the phone with an expert on the murder trial he was then engaged in
9 and whom he'd promised to post materials for his review that day.
10
11

12 I certify under penalty of perjury that the foregoing is true and correct. As to those
13 statements based on information and belief I believe them to be true and correct.
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17 DATED: 9-25-15

Respectfully Submitted, ,


Preciliano Martinez