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2 1012 Eleventh Street Suite 103
3 Modesto, CA 95354
4 (209) 524-5616

5 Attorney for BALJIT SINGH ATHWAL

FILED
2015 AUG 31 AM 1:38
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY: *[Signature]* DEPUTY

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

10
11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,
13 Plaintiff,
14 V.
15 BALJIT ATHWAL
16 Defendant.

Case Number: 1490969

NOTICE AND MOTION FOR
JOINDER TO MOTION TO
RECUSE DISTRICT ATTORNEY
(P.C. SECTION 1424) AND
DECLARATION OF COUNSEL.

Date: September 14, 2015
Time: 10:00 a.m.
Dist: 0

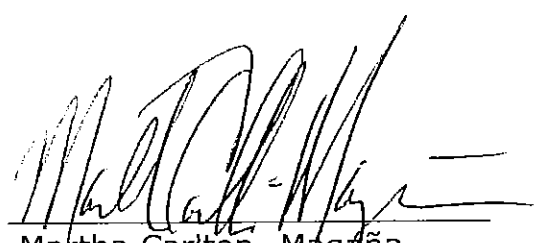
17 TO: CALIFORNIA ATTORNEY GENERAL KAMALA HARRIS AND STANISLAUS
18 DISTRICT ATTORNEY BIRGIT FLADAGAR,

19 COMES NOW defendant BALJIT ATHWAL , Through his attorney to join in the
20 NOTICE OF MOTION AND MOTION TO RECUSE DISTRICT
21 ATTORNEY (CAL. PEN. CODE § 1424) filed BY GEORGIA DEFILIPPO on August 25,
22 2015 with the DECLARATION OF TIM A. PORI IN SUPPORT OF THE MOTION TO
23 RECUSE set to be heard on September 14, 2015. THE MOTION TO RECUSE THE OFFICE
24 OF THE STANISLAUS DISTRICT ATTORNEY is also made pursuant to Defendant' right to
25 a fair trial as guaranteed by the sixth and fourteenth amendments to the United States
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28 Constitution Attached is the DECLARATION OF MARTHA CARLTON-MAGAÑA in

AM
AZ

1 support of the MOTION TO RECUSE.

2 Dated: August 30, 2015



Martha Carlton- Magaña
Attorney for Defendant

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1 ADDITIONAL POINTS AND AUTHORITIES

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3 “Prosecutors are public fiduciaries. They are servants of the People, obliged to pursue
4 impartially in each case the interests of justice and of the community as a whole.1 ”When
5 conflicts arise that compromise their ability to do so, they can and should be recused.”
6 Haraguchi v. Superior Court (2008) 43 Cal.4th 706. [A] ‘conflict,’ for purposes of section
7 1424, ‘exists whenever the circumstances of a case evidence a reasonable possibility that the
8 DA’s office may not exercise its discretionary function in an evenhanded manner. Thus, there
9 is no need to determine whether a conflict is “actual” or only gives an “appearance” of
10 conflict.’ [Citation.] But however the conflict is characterized, it warrants recusal only if
11 ‘so grave as to render it unlikely that defendant will receive fair treatment during all portions of
12 the criminal proceedings.” [Citation.]” *People v. Eubanks*, supra, 14 Cal.4th at p. 592, 59
13 Cal.Rptr.2d 200, 927 P.2d 310. “As we explained at length in *Eubanks*, public prosecutors in
14 California are required to exercise their discretionary functions, which are broad in scope and
15 subject to only limited review, “ ‘with the highest degree of integrity and impartiality.’ ”
16 (*Eubanks*, supra, 14 Cal.4th at p. 589, quoting *People v. Superior Court (Greer)* (1977) 19
17 Cal.3d 255, 267.) Impartiality, in this context, means not that the prosecutor is indifferent to the
18 conviction or acquittal of the defendant—the prosecutor does not share in the neutrality
19 expected of the judge and jury—but that the prosecutor is “expected to exercise his or her
20 discretionary functions in the interests of the People at large, and not under the influence or
21 control of an interested individual.” (*Eubanks*, at p. 590.) The public prosecutor’s
22 proper interest “ ‘is not that it shall win a case, but that justice shall be done.” *People v.*
23 *Vasquez* (2006). 39 CAL.4TH 47.
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1 The trial courts' statutory power under section 1424 continues to allow recusal whenever
2 a conflict creates a likelihood of unfair treatment. This standard serves to prevent potential
3 constitutional violations from occurring. Thus, the failure to recuse when required under
4 section 1424 may lead to the denial of a fair trial or other unfair treatment, but does not
5 necessarily do so. Ibid..

7 In *People v. Superior Court (Greer)* 1977 19 Cal.3d at p. 268.), however, the Supreme
8 court observed that a "fair and impartial trial" is fundamental to due process and that the
9 prosecutor, as well as the court, must "respect this mandate" by exercising his or her
10 discretionary powers impartially (id. at p. 266), but we did not define the types or severity
11 of interestedness that would violate the constitutional mandate. In the instant case the personal
12 animosity of the prosecutor, her administration, her investigators, and the other members of the
13 task force is so profound, that to allow them to continue to prosecute these defendants, would
14 be abrogate any government interest in a fair trial, contrary to the sixth and fourteenth
15 amendments to the United States Constitution.

18 Conclusion

19 On the instant facts, the defendants have met their burden that it is reasonable to believe
20 that the Office of the District Attorney has conflict in this case based on the long standing
21 animosity of the office toward Mr. Carson, and the resultant actions of its prosecutors and
22 investigators, over many years. Its attempts to characterize defendants' pursuit of legal cation
23 against it and its agents in order to protect themselves as a criminal obstruction of justice is just
24 one indicator of how extremely unlikely it is that these defendant will get fair treatment in these
25 proceedings The only way to protect defendants right to a fair trial, prosecuted by a prosecutor
26 with the highest degree of integrity and impartiality, one who is not interested in a conviction,
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1 but that justice be done, is to recuse the office of the Stanislaus County Public Defender.

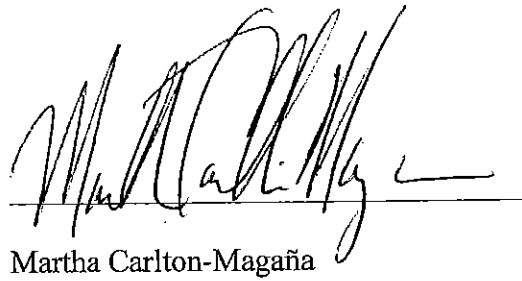
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3 Dated August 30, 2015

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Martha Carlton-Magaña

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3 MARTHA CARLTON-MAGAÑA CSB #70391
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9 Attorney for BALJIT SINGH ATHWAL

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF STANISLAUS**

14 Case Number: 1490969

15 THE PEOPLE OF THE STATE OF
16 CALIFORNIA,

17 DECLARATION OF COUNSEL.

18 Plaintiff,
19 V.

20 BALJIT ATHWAL

21 Defendant.

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24 **wDECLARATION in SUPPORT OF MOTION TO RECUSE**

25 I, Martha Carlton- Magaña, do hereby state and declare:

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1. I am an attorney licensed to practice in the State of California and in such capacity represent defendant Baljit Athwal.
 2. I have been a criminal defense attorney for thirty- nine years, including 22 years s a Stanislaus County deputy public defender and eight years in private practice in Stanislaus County. In such capacity I have represented over twenty defendants charged with murder in this county including thirteen charged with special circumstances. Ihae consulted on many occasions with other attorneys in this county regarding their murder cases.

- 1 3. Overt Act No. 9 of the Conspiracy to Obstruct Justice charged in count two charges;
2 “That on or about and between February, 2012 to the present, defendant
3 and co-conspirator, FRANK CARSON, induced co-conspirators to file
4 complaints and civil suits in order to thwart and obstruct the
5 investigation into the murder of KOREY KAUFFMAN.”
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- 7 4. Baljit Athwal, his wife Navneet Athwal , his brother Daljit Athwal. And Karan Inc. dba
8 as POP-N-CORK are plaintiffs in Federal court in United States District Court Eastern
9 District in Case. No. 1:15-cv-0311-TLN-BAM, filed February, 26,2015, and presently
10 pending before the Honorable Troy L. Nunley, judge. The defendants are The County
11 of Stanislaus, The City of Modesto, The City of Turlock, the Stanislaus County District
12 Attorneys Office, District Attorney Birgit Fladagar, District Attorney investigators Kirk
13 Bunch, and Steven Jacobson, both members of the Korey Kaufmann task force, their
14 supervisor Investigator Dale Lingerfelt, Turlock Police Chief Paul Edward Jones,
15 Turlock detective and task force member Timothy Redd, Modesto Police Chief Galen
16 Carroll, Modesto, Modesto Detective and task force member John Evers, and 40 john
17 does. The complaint is for “Violations of the Fourth and Fourteenth Amendments to the
18 United States Constittion (42 U.S.C section 1983; False arrest and imprisonment;
19 Negligence; Intentional infliction of emotional distress; and, Trespass to Chattel. The
20 attorneys representing plaintiffs are Morrison & Forster LLP attorneys Arturo
21 Gonzales, Somnath Raj Chatterjee, and Pablo Nichols. (the complaint and joint status
22 report are attached as exhibits A and B) The complaint involves abusive actions against
23 plaintiffs by members of the Korey Kauffman task force.
24
- 25 5. I am aware of the international, stellar, reputation of Morrison & Forster LLP. and the
26 respect held for lead Morrison Forster attorneys Arturo Gonzalez and Somnath Raj
27 Chatterjee.. My son Christopher Magaña an attorney with Morrison & Forster, but not,
28 in any way, involved in this law suit.
6. The Office of the Stanislaus District Attorney is using this law suit, in which it and its

1 employees are being sued for malfeasant acts by the plaintiffs, as evidence of an overt
2 act, Overt Act. No. 9, to prove the felony charge of conspiracy to obstruct justice in
3 count two, and , it appears, using the allegation of a felony conspiracy to obstruct justice
4 to invoke the felony murder rule in the murder, with a special circumstance of lying in
5 wait, in count 1.

- 6
- 7 7. I spoke with Attorney Pablo Nichols, one of the attorneys representing the plaintiffs in
8 the federal law suit. He informs me the case is presently pending the setting of a
9 briefing and deposition schedule. The Court had told all counsel, over objection of
10 defendants attorneys, that it wished to have a briefing and deposition schedule by the
11 end of August 2015. The filing of the instant criminal charges will work to suspend the
12 federal case and stop the immediate deposition of defendants and witnesses.
- 13 8. At the hearing of August 25, 2015 in this case Deputy District Attorney Marlisa Ferreira
14 tried to introduce into evidence a transcript of a phone conversation between Frank
15 Carson and Preveen Singh, in which Mr. Carson said he'd pulled papers to run for
16 District Attorney ,and said of the Office, " they need to be cleaned house." Ms. Ferreira
17 tried to argue to the court that this phrase was evidence of Mr. Carson's attempt to
18 obstruct justice.
- 19 9. I have known attorney Frank Carson for over twenty years. He is a prominent, and very
20 successful criminal defense attorney who has had an antagonistic relationship with the
21 Stanislaus County District Attorney since at least 1994. In 1994 we were both attorney's
22 with the Stanislaus Public Defenders Office. The District Attorney tried to force the
23 Public Defender to fire Mr. Carson in 1994 and continued to try to force Public
24 Defender Dallas Cole to fire Mr. Carson until Mr. Cole was ultimately forced to retire,
25 in part over his refusal to fire Mr. Carson in 1996. Mr. Carson went into private
26 practice with the arrival of the new Public Defender, Tim Bazar.
- 27 10. According to the Affidavit in Support of the Ramey Warrants filed in this case, Korey
28 Kauffman was reported missing on April 2, 2012. On April 10 2012 Korey Kauffman's

1 stepfather reported he feared Korey Kauffman had gone onto the property of Frank
2 Carson. (P.41). Immediately, in April, 2012, the District Attorney formed a task force
3 on the disappearance of Korey Kauffman (p. 4) . A few weeks later, in May 2012, the
4 task force decided wiretaps were needed. Affiant Deputy Sheriff Corey Brown joined the
5 task force. (p.4).. According to the testimony of District Attorney Investigator during
6 the hearing of August 25, 2015 in this case, District Attorney Chief David Harris was
7 the lead prosecutor on the task force and District Attorney Investigator Kirk Bunch was
8 the lead investigator. Modesto Police Department Detective John Evers was and is also
9 on the task force despite the lack of any nexus between the death of Korey Kauffman
10 and the City of Modesto. (p.5)

11 11. The District Attorney has never formed and led a task force in any of the murder cases

12 12. I have searched the internet for information on unsolved homicides in Stanislaus County
13 and have found fifty eight unsolved homicides. The list includes two juveniles, Jonique
14 Williams and Valdemar Vargas, and at least three elderly victims. Betty Eilberg,
15 William Ashely, and Robert Ross. he list includes three high profile homicides , Jonique
16 Williams, Katherine Velthoen, and Lacy Ferguson. The list also includes my godson
17 Joseph Ross.. (The list is attached as exhibit c). I am familiar with the facts of many of
18 the homicides. To my knowledge none of those homicides have ever had a District
19 Attorney led task force assigned to investigate the case.
20

21 13. I also found on the internet fourteen missing persons in Stanislaus County To my
22 knowledge none of those homicides have ever had a District Attorney led task force
23 assigned to investigate the case.

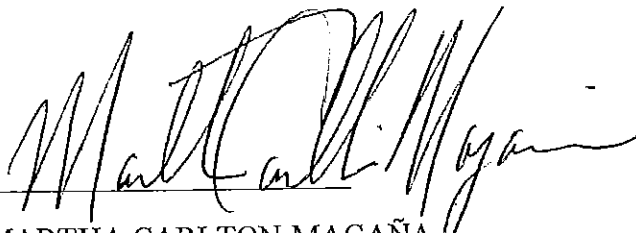
24 14. In 2014 the District Attorneys Office placed an electronic billboard, of the type used on
25 the freeways to warn of impending traffic problems, in front of there office, with a
26 message asking for any information in the death of Korey Koffman. To my knowledge
27 the Disrict Attorney has never used such billboard in any of the other 58 unsolved
28 homicide cases in this county.

1 15. At each and every stage of the investigation including my own conversation with Ms.
2 Ferreira on August 17, 2015 Baljit Athwal and others have been repeatedly told that the
3 primary goal of the District Attorney is to get Frank Carson, and that their cooperation
4 in that goal would result in favorable treatment.

5 16. . Whereas, there is a long standing enmity against Frank Carson by high ranking
6 members of the Stanislaus Office of the District Attorney, including District Attorney
7 Birgit Fladagar and Chief Deputie District Attorneys David Harris and Marlisa Ferreira,
8 and District Attorney Investigators Dale Lingerfelt, Kirk Bunch, and Steven Jacobsen,
9 and Kauffmann task force members John Evers and Frank Navarro, as demonstrated in
10 the declaration of Tim A. Pori with supporting documents, and this declaration , and
11 that Baljit Athwal and the other co-defendants are swept up in that enmity, this
12 District Attorney's Office is so biased in a profoundly personal way against Frank
13 Carson that it is extremely unlikely that the defendants in this case can get fair treatment
14 in this case unless the Stanislaus Office of the District Attorney is removed.
15

16
17 I declare under penalty of perjury that the foregoing is true and correct to the best of my
18 knowledge and recollection.
19

20 Executed at Modesto, California on August 29, 2015

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24 MARTHA CARLTON-MAGAÑA
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28 MARTHA CARLTON-MAGAÑA, CSB# 07391

1 Martha Carlton-Magaña
Attorney at Law
2 1012 Eleventh Street, Suite 103
Modesto, California 95354
3 Telephone (209) 524-5616
4 Attorney for BALJIT ATHWAL

5
6 **PROOF OF SERVICE**

7 I am a citizen of the United States and am employed in the Stanislaus County; I am over the age
of eighteen (18) years and not a party to the within action; my business address is 1012 Eleventh Street,
Suite 103, Modesto, California 95354.

8 On AUGUST 31, 2015 I served the following document(s): PEOPLEmv. BALJIT ATHWAL
SSCN 1490969; JOINDER TO MOTION TO RECUSE, and served in the manner and/or manners
9 described below to each of the parties herein, addressed as stated below:

10 Office of the Attorney General
11 1300 "I" Street
Sacramento, CA 95814-2919
12 Phone: (916) 445-9555

13 Birgit Fladager
14 Stanislaus County District Attorney
832 12th Street, Suite 300
15 Modesto, California 95354,

16 Precilliano Martinez
1120 14TH St Suite 5
17 Modesto, Ca. 95354
attymartinezp@yahoo.com

18 Timothy Rein
19 39 S. Livermore Ave. #209
Livermore, Ca. 94550
20 Rienlaw@sbcglobal.net

21 Timothy Pori
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23 www.timpori.com

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1 Hans Hjertonsson
2 724 10th St.
3 Modesto, Ca. 95354
4 Hans.Hjertonsson@gmail.com

5 Lawrence J. Niermeyer
6 1020 15th St. Suite 10
7 Modesto, Ca. 95354
8 ltniermeyer@aol.com

9 Bruce Perry (conflict II)
10 948 11th St. suite 16
11 Modesto, Ca. 95354

12 By mail, or electronically if available, or at the Attorney Box
13 Stanislaus County Court Clerks Office
14 800 11th St. Modesto, California 95354

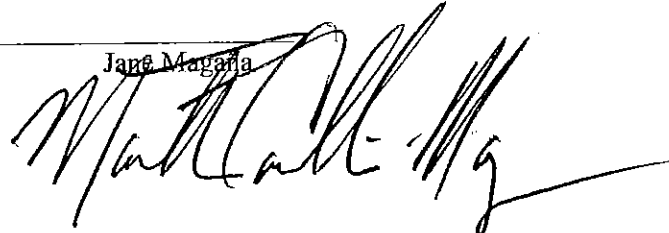
15 I caused such envelope(s) to be delivered by hand to the address(s) listed above, the attorney box, or
16 electronically.

17 I declare under penalty of perjury, under the laws of the State of California, that the

18 Foregoing is true and correct.

19 Executed at Modesto, California, on August 30 2015

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Jane Magaña


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EXHIBIT C

Stanislaus Unsolved Homicides – August 29, 2015

1. Jonique Williams juvenile 1999
2. Tigan Bonton 2003
3. James Brown 2003
4. Valdemar Rojas juvenile 2008
5. Daniel Ellis 2008
6. Joseph Ross 2006
7. Lacy Ferguson 2003
8. Katherine Velthoen 1999
9. Christopher Sisk 2007
10. Jose Perez Gonzales 2005
11. Michael Iitreb 2007
12. Jamie Garcia 2007
13. Paul Barraza 2005
14. Thomas Leimbach 1993
15. Sabrina Ordaz 2005
16. Donna J. Peeples 1975
17. David Hooten 1999
18. Ruben Plascencia 1998
19. Omar Mendoza 2013
20. Donnie Ray Coyle 2012
21. Damian King 2012
22. Amador Molina 2012
23. Mark McRorie 2010
24. Amy Freesha 2001
25. Michael Strong 2010
26. Michael John Silveira 2014
27. Richard Frank Bernal 2014
28. Andres Garcia 2010
29. Robert Ross 2014
30. Frankie Garcia
31. Richard Ware 2014
32. Steven Miller 2014
33. Teresa Unsiog 2014
34. Oscar Nuñez 2014
35. Alejandro Maldonado 2014
36. Manuel Dasilva 2014
37. Dillon Gilmore/Reynolds 2014
38. Teresa Provencio 2013
39. Juan Calvillo 2014
40. Johanna Walls 2005
41. Jose Hurtado 2009
42. Blake Berry 2014
43. Alejandro Rangel 2008
44. William Ashley (elder) 2008
45. Gregory Bettencourt 2011

46. Charles Clem 2008
47. Betty Elinberg 2005 (elder)
48. Roy McClain 2010
49. Yosimar Mosqueda 1912
50. Donald Norwood 1995
51. Gustavo Orozco 2009
52. Kathy Irene Sweet 1998
53. Ramiro Souza jr 2005
54. Ninoos "Nick" Atoori 2005
55. Lloyd Borelli 2007
56. Kelly Story 2009
57. Anthony Taylor II 2007
58. Ron Sok 2007