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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

Ana Valencia

LAW OFFICE OF ALONZO J. GRADFORD
ALONZO GRADFORD, SBN 244201
1202 H STREET, SUITE C
MODESTO, CALIFORNIA 95354
209/408-0342 (PHONE); 209/408-0797 (FAX)

ATTORNEY FOR DEFENDANT,
Eduardo Quintanar, Jr.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS

The People of the State of)
California,)
Plaintiff,)
v.)
Eduardo Quintanar, Jr.,)
Defendant.)

Case No. 1490969
NOTICE OF MOTION AND
MOTION TO CONTINUE
PRELIMINARY HEARING;
DECLARATION OF ALONZO
GRADFORD IN SUPPORT
THEREOF

Date: 9/28/15
Time: 8:30 am
Dept: 26

TO THE ABOVE-ENTITLED COURT AND TO THE DISTRICT ATTORNEY OF
STANISLAUS COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that, on September 28, 2015, in
Department 26 at 8:30 am or as soon thereafter as the matter
may be heard, defendant, Eduardo Quintanar, Jr., will make a
motion that the court order the above-entitled matter continued
pursuant to Penal Code section 1050. The matter is currently
scheduled for Preliminary Hearing on September 28, 2015.

1 This motion is made on the following grounds:

2 Defendant is faced with potentially conflicting positions
3 concerning the pending Motion to Recuse the District
4 Attorney and his Preliminary Hearing. Additional time is
5 necessary to for the resolution of these potential
6 conflicts.
7

8 This motion will be based on the attached supporting
9 memorandum, all papers filed and records in this action, the
10 attached declaration(s) and evidence taken at the hearing on
11 this motion, and argument at that hearing.
12

13
14 Date: September 24, 2015


ALONZO GRADFORD

15
16
17 **SUPPORTING MEMORANDUM**

18 **THE DEFENDANT IS ENTITLED TO A CONTINUANCE ON A SHOWING OF GOOD**
19 **CAUSE**

20 Penal Code section 1050(b) provides that:

21 To continue any hearing in a criminal proceeding,
22 including the trial, (1) a written notice shall be filed
23 and served on all parties to the proceeding at least two
24 court days before the hearing sought to be continued,
25 together with affidavits or declarations detailing
26 specific facts showing that a continuance is necessary...

27 Penal Code section 1050(e) further provides that
28 "Continuances shall be granted only upon a showing of good
cause." The request must be supported by declarations,
unless the court first finds good cause to excuse the
notice and declaration requirement. The declaration must

1 be executed under penalty of perjury. (Brown v Superior
2 Court (1987) 189 CA3d 260, 265, 234 CR 416.)

3 The grant or denial of a motion for continuance is an act
4 within the Court's discretion (Ungar v Sarafite (1964) 376 US
5 575, 589, 11 L Ed 2d 921, 931, 84 S Ct 841), but this
6 discretion is not without bounds:
7

8
9 While the determination of whether in any given case a
10 continuance should be granted normally rests in the discretion
11 of the trial court, that discretion may not be exercised in
12 such a manner as to deprive the defendant of a reasonable
13 opportunity to prepare his defense. (Jennings v Superior Court
14 (1967) 66 C2d 867, 59 CR 440.)
15

16
17 Although the Court must consider the welfare of witnesses
18 (Pen C §1050(g)) and the right of the People to a speedy
19 disposition (Pen C §1050(a)), it must also consider the
20 defendant's right to a fair trial. (People v Courts (1985) 37
21 C3d 784, 794, 210 CR 193. See also People v Murphy (1963) 59
22 C2d 818, 31 CR 306 (error to deny continuance to prepare
23 following last-minute amendment by prosecution).)
24

25
26 The constitutional right to counsel (United States
27 Constitution, Amendment VI; California Constitution article I,
28

1 section 15) requires that a defendant be given a reasonable
2 continuance to secure counsel of his or her choice (People v
3 Courts (1985) 37 C3d 784, 789, 210 CR 193; People v Byoune
4 (1966) 65 C2d 345, 54 CR 749), if the defendant can show that
5 he or she is financially able to secure counsel (People v Lee
6 (1967) 249 CA2d 234, 241, 57 CR 281; see People v Parks (1964)
7 230 CA2d 805, 811, 41 CR 329).
8

9
10 **CONCLUSION**

11 For the above reasons, defendant requests a continuance of
12 the Preliminary Hearing presently set for September 28, 2015.

13 Date: September 24, 2015

14 Respectfully submitted,

15
16 
17
18 ALONZO GRADFORD

19
20 **DECLARATION OF ALONZO GRADFORD IN SUPPORT OF MOTION FOR**

21 **CONTINUANCE**

22
23 I, Alonzo Gradford, do hereby declare:

- 24 1. That I am the attorney for Gerardo Hernandez.
25
26 2. That this case is presently set for Preliminary Hearing on
27 September 28, 2015.
28

1 3. Defendant is faced with potentially conflicting positions
2 concerning the pending Motion to Recuse the District Attorney
3 and his Preliminary Hearing. Additional time is necessary to
4 for the resolution of these potential conflicts.

5
6 4. That I have notified the Fresno County District Attorney's
7 office of this motion, the date of the hearing on this motion,
8 and their right to be heard by the court, as required by Penal
9 Code section 1050(b).

10 5. That the defendant is willing to waive the 10-day rule for
11 this purpose.

12 I declare under penalty of perjury under the laws of the State
13 of California that the foregoing is true and correct.

14
15
16 Date: September 24, 2015


ALONZO GRADFORD

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Stanislaus, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1202 H Street, Suite C, Modesto, CA 95354

_____ On the date indicated below, I served the attached document(s) on all parties in said action by placing a true copy thereof in a sealed envelope in the designated area for outgoing mail addressed as set forth below.

_____ On the date indicated below, I served the document(s) designated below via overnight mail on all parties in said action by placing a true copy thereof in a sealed envelope in the designated area for FEDERAL EXPRESS pick-up addressed as set forth below.

_____ On the date indicated below, I personally served the document(s) designated below by delivering a true copy thereof to the person(s) and at the address(es) set forth below.

_____ On the date indicated below, I served the document(s) designated below by transmitting a true copy thereof via FAX to the person(s) and at the FAX number(s) set forth below.

 X _____ On the date indicated below, I served the document(s) designated below by transmitting a true copy thereof via electronic notification to the person(s) and electronic notification addresses as set forth below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Document Title: MOTION TO CONTINUE PRELIMINARY HEARING

See People v. Carson, et al., No. 1490969 Service List

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed September 24, 2015 at Modesto, California.



1 KRISTY TRIBUZIO

People v. Carson, et al.
No. 1490969
SERVICE LIST

**Deputy District Attorney
County of Stanislaus**
832- 12th Street, Suite 300
Modesto, CA 95354
Telephone: (209) 525-5550
Fax: (209) 558-4027
E-mail: marlisa.ferreira@standa.org

Timothy B. Rien
Law Offices Timothy B Rien
39 S Livermore Ave #209
Livermore, CA 94550-3119
Telephone: (925) 449-0666
Fax: (925) 449-3257
E-mail: rienlaw@sbcglobal.net
Attorney for Walter Westley Wells

Preciliano Martinez
Law Office of Preciliano Martinez
1120- 14th Street, Suite 5
Modesto, CA 95354
Telephone: (209) 579-2206
Fax: (209) 579-2211
E-mail: attymartinezp@yahoo.com
Attorney for Frank Clifford Carson

Martha Carlton-Magana
Law Offices of Magana & Carlton-Magana
1012- 11th Street, Suite 103
Modesto, CA 95354
Telephone: (209) 524-5616
Fax: (209) 524-5312
E-mail: carltnm@hotmail.com
Attorney for Baljit Atwal

Hans Hjertonsen
Law Offices of Grisez, Orenstein & Hertle
724- 10th Street
Modesto, CA 95354
Telephone: (209) 526-3121
E-mail: hans.hjertonsen@gmail.com
Attorney for Daljit Atwal

Ryan Roth
Attorney at Law
1120 14th Street, Suite 5
Modesto, CA 95354
Telephone: (209) 557-2592
Fax: (209) 579-2211
E-mail: rroth@Roth-Legal.com
Attorney for Christina Defilippo

Tim A. Pori
Law Offices of Tim A. Pori
521 Georgia Street
Vallejo, CA 94590
Telephone: (707) 644-4004
Fax: (707) 644-7528
E-mail: timpori1@gmail.com
Attorney for Georgia Deflippo

Lawrence T. Niermeyer
Law Offices of Moorad, Clark & Stewart
1020- 15th Street, Suite 10
Modesto, CA 95354
Telephone: (209) 574-9447
Fax: (209) 526-4703
E-mail: lniermeyer@aol.com
Attorney for Scott McFarlane

Law Offices of Perry & Associates
948- 11th Street, Suite 16
Modesto, CA 95354
Telephone: (209) 544-2757
Fax: (209) 544-5735
E-mail: brucerperry@msn.com
Attorney for Robert Woody