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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

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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, et. al.,

17 Defendants.

CASE NO.: 1490969

JOINT MOTION OF FRANK CARSON
AND GEORGIA DEFILIPPO TO BAR
THE RELEASE, CONSIDERATION
AND REVIEW OF ANY TAX RECORDS
SUBPOENAED AND OBJECTION TO
ANY RELEASE, CONSIDERATION,
REVIEW, OR EXAMINATION THEREOF

Date: TBA
Time: 9:30 a.m.
Dept.: 26

18 I.

19 INTRODUCTION

20 The People have subpoenaed the tax returns of Frank Carson and his wife, Georgia
21 DeFilippo. These are joint tax returns. The People's memorandum of points and authorities,
22 dated December 28, 2015, provides absolutely no colorable relevance of anything that they hope
23 to obtain from the tax returns. At a bare minimum, it is incumbent upon the People to establish
24 some relevancy. On January 5, 2016, defense counsel attempted to informally ascertain the
25 People's position as to how the tax returns might be relevant, D.D.A. Ferreira refused to provide
26 any such information, even admitting the People did not know what they hoped to ascertain from
27 the tax returns. See Declaration of Stephen Schmid filed herewith. The People are clearly on a
28 harassing fishing expedition with the intent to invade the Constitutional privacy rights of Carson

1 and DeFilippo, and the privileged nature of their tax returns.

2
3 **II.**

4 **STATEMENT OF THE FACTS**

5 The People have subpoenaed an unknown number of years income tax returns from
6 defendants Frank Carson and Georgia DeFilippo's tax preparers. Carson and DeFilippo are
7 married.

8 Frank Carson alone is charged in Count IV of a criminal complaint of perjury concerning
9 a 2014 campaign disclosure form of assets. Those forms do not demand disclosure of tax
10 information.

11 Neither defendants Carson or DeFilippo are charged with tax evasion or financial crimes
12 of any type. Defendants Carson and DeFilippo have no criminal history whatsoever, much less
13 an offense involving tax fraud or evasion.

14 Defendant Frank Carson is a criminal defense attorney who has vigorously opposed the
15 Stanislaus County District Attorney in litigation for the past 25 years.

16 In 2014 Carson ran unsuccessfully for the Office of District Attorney of Stanislaus
17 County. The campaign disclosure form alleged as the basis for Count IV arose out of that
18 election effort.

19 There has been no discovery provided that details the charged "MISREPRESENTATION
20 ON FORM 700," nor is there an arrest warrant that details the supposed falsehood.

21
22 **III.**

23 **The People In Their Pleadings Have Made No Offer of Proof**
24 **Or Expected Relevancy For The Release Sought**

25 The People have made no offer of proof or theory to advance why the defendant's tax
26 returns would be relevant to a false statement, omission, or disputed fact concerning a perjury
27 count exploring a disclosure form of assets, income sources, or investments. As per the attached
28 declaration of Attorney Schmid, the D.A. has refused to disclose or discuss how the tax returns

1 could be relevant.

2 Mr. Carson has been charged with the asserted crime of an incorrect attestation of fact on
3 Form 700. To make this charging allegation in good faith, the People had to have obviously
4 identified the alleged wrongdoing so further inquiry as to income tax returns is needless. By
5 default, therefore, it is clear that this effort is a transparent attempt at a fishing expedition.

6 IV.

7 **There Is A Statutory Right of Privacy Concerning,**
8 **And Privilege Against Disclosure of Tax Returns**

9 The Court in *Weingarten v. Superior Court* (2002) 102 Cal.App.4th 268, 274 recognized
10 that California Courts have "interpreted state taxation statutes as creating a statutory privilege
11 against disclosing tax returns." Cal. Revenue & Tax Code, §19542, provides:

12 Except as otherwise provided in this article and as required
13 to administer subdivision (b) of §19005, it is a misdemeanor for
14 the Franchise Tax Board or any member thereof, or any deputy,
15 agent, clerk, or other officer or employee of the state (including its
16 political subdivisions), or any former officer or employee or other
17 individual, who in the course of his or her employment or duty has
or had access to returns, reports, or documents required to be filed
under this part, to disclose or make known in any manner
information as to the amount of income or any particulars
(including the business affairs of a corporation) set forth or
disclosed therein.

18 The People's memorandum of points and authorities allege an unspecified
19 misrepresentation on Form 700. The People do not even bother to identify Form 700.
20 Presumably, that is California Form 700, Statement of Economic Interests, issued by the Fair
21 Political Practices Commission. Moreover, the People fail to identify any aspects of any alleged
22 misrepresentations on Form 700, much less how it hopes to obtain any relevant information from
23 the subpoenaed tax returns. Even if such a link to relevancy could be made, the People have
24 failed to make the prerequisite showing that no other alternative less intrusive methods of
25 obtaining the information exist. See *Hooser v. Superior Court* (2000) 84 Cal.App.4th 997, 1004.

26 Starting with *Webb v. Standard Oil Co.* (1957) 49 Cal.2d 509, 513, the seminal case
27 establishing the right to a privilege in tax returns, California law has long recognized statutory
28 privileges against disclosing tax returns. See also, *Weingarten v. Superior Court* (2002) 102

1 Cal.App.4th 268, 270; *Firestone v. Hoffman* (2006) 140 Cal.App.4th 1408, 1420.

2 The People cite no case where any court has compelled production of tax returns in
3 violation of this long-recognized privilege in the criminal setting. Indeed, the California
4 Supreme Court has applied the privilege in a criminal case. See *Aday v. Superior Court*, (1961)
5 55Cal.2d 789, at 797, where the court held “the sole exception permitting disclosure for purposes
6 of a criminal prosecution appears in sections 19283 and 26453, which are limited to prosecutions
7 for tax violations, thereby indicating that disclosure is not to be made in other criminal cases.”
8 Although, unquestionably, *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, at 721 recognizes
9 that there can be limited exception to this privilege, that case involves disclosure and inspection
10 of corporate tax returns, which are not comparable with personal tax returns at issue here,
11 especially, given the fact that California does not recognize that corporations have a
12 constitutional right to privacy under Article I, Section 1 of the California Constitution, whereas
13 individuals manifestly do. *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 773.

14 Furthermore, in addition to the failure to offer any particularized need for the tax returns in
15 this case, and the failure to explain why less intrusive alternatives are not available, much less
16 failing to even identify what precisely the People hope to elicit from the subject tax returns as to
17 the nature of the alleged misrepresentation on Form 700, the People completely ignore the fact
18 that these are joint returns and there is absolutely no allegations of any misrepresentation against
19 Ms. DeFilippo. Given the nature of tax returns, it would be completely wrong and an invasion of
20 Ms. DeFilippo’s privacy and privilege rights to allow disclosure, review or inspection of the
21 subject tax returns, irrespective of any possible relevancy to any claims against Mr. Carson. It
22 should be an insurmountable hurdle for the People to invade an innocent bystander’s privilege
23 and privacy rights on the absolute lack of any showing of any possible relevancy to this matter.

24 In addition, under Article I, Section 1 of the California Constitution, the courts in this
25 state have repeatedly recognized a right of privacy in financial matters. *Schnabel* supra, at 712.
26 Clearly, Article I, Section 1 of the California Constitution guaranteeing a right of privacy covers
27 tax returns. The argument made to the California voters in support of the right of privacy into the
28 California Constitution by means of the referendum process is set forth in the case of *Wilkinson*

1 v. *Time Mirror Corp.* (1989) 2145 Cal.App.3d 1034. Specifically, at page 1041, the arguments
2 of the People of California in support of the referendum expressly included the recognition of the
3 relationship between tax returns and privacy.

4 In sum, the voters of the State of California have clearly spoken, as have the courts, and
5 have on repeated occasions made unequivocally clear that tax returns are privileged and
6 considered highly private information. There has been absolutely no showing here significant
7 enough to overcome the Article I, Section 1 privacy guarantee of the California Constitution,
8 much less the privilege recognized in tax returns by the courts in the State of California.

9
10 **V.**

11 **The Cases Cited By The People Are Inapplicable**
12 **And Not Germane To This Issue**

13 The *Weingarten* case is cited by the People in quoting federal opinions examining the
14 accountant–client privilege concerning tax and tax return cases, not a perjury count alleged on an
15 election disclosure form.

16 The other cases cited all dealt with tax evasion and failure to file state tax returns.

17 The “public policy” interest asserted for disclosure is unknown, undefined, and not
18 comparatively examined or balanced in this case as suggested in the *Weingarten* decision.

19
20 **VI.**

21 **The Release Sought Invades The Privacy Of Georgia DeFilippo**
22 **And Prejudices Her Interests And Privileges**

23 Georgia DeFilippo, already being victimized by a prosecution based on being married to
24 Carson, is further harassed and harmed by a questionable and unjustified search of her finances.
25 The fishing expedition sought puts her common and separate finances under an accusatory
26 microscope.

27 Coate v. Superior Court (1978) 81 Cal.App.3d 113, stands for the proposition that both
28 parties to a joint return are holders of the privacy privilege and both must waive as to a joint

1 return.

2
3 **VII.**

4 **There Has Been No Showing That The**
5 **Information Sought Could Not Be Acquired**
6 **Without Tax Returns**

7
8 In view of the strong presumption of tax return privacy and the lack of relevance
9 established, it is particularly important to balance if alternative means for information are
10 possible or have been exhausted.

11 Instructive is *King v. Mobile Home Rent Review Board* (1989) 216 Cal.App. 3d 1532,
12 1538, which found that expediency of local government review was not a superior public policy.
13 The rent control board there required tax return submission in connection with hardship
14 applications in order to verify information. There was no showing that the information could not
15 be acquired without tax returns.

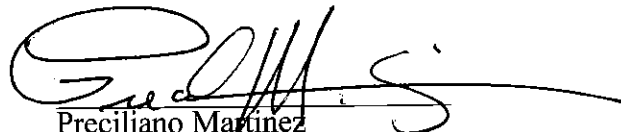
16
17 **VIII.**

18 **Conclusion**

19 For the foregoing reasons, the review, examination, or inspection or any disclosure of the
20 subpoenaed tax returns must be barred and the returns must be kept absolutely under seal.

21 Should the court entertain any thought about allowing the inspection, review, or access to
22 the subject tax returns, then both Carson and DeFilippo respectfully request an immediate stay of
23 any activity pending a petition of writ of mandate/prohibition.

24
25 Respectfully submitted,

26 
27 Preciliano Martinez
28 Attorney for Defendant

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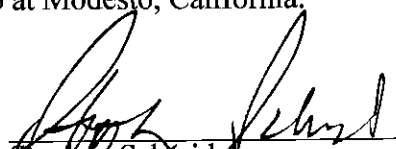
CASE NO.: 1490969

DECLARATION OF STEPHEN
SCHMID IN OPPOSITION TO MOTION
TO RELEASE TAX RETURNS

15 I, Stephen Schmid, declare as follows:

16 After court adjourned on January 5, 2016, I approached D.D.A. Marlissa Ferreira and
17 advised her I was working on an opposition to the motion to release the subpoenaed tax returns.
18 I told her I would like to meet and confer about the motion., and asked her exactly what she
19 hoped to elicit from the tax returns. She replied she did not know since she had not seen them. I
20 responded then, what was the DA contending was the perjury being alleged that the D.D.A.
21 hoped to prove by using the tax returns? She responded she did not have to tell me that. I then
22 stated, how could she contend any relevancy of the tax return if she was not going to disclose the
23 underlying perjury? She said she did not have to show relevancy and walked off.
24

25 I declare under penalty of perjury that the forgoing is true and correct and that this
26 declaration was executed on January 5, 2016 at Modesto, California.

27 
28 Stephen Schmid

1 **PROOF OF SERVICE**

2 I declare under penalty of perjury that:

3 I am a citizen of the United States and am employed in the County of Stanislaus. I am
4 over the age of eighteen years and not a party to the within action. My business address is as
follows: 811 15th Street, Modesto, CA 95354.

5 On the date set forth below, I caused the attached **JOINT MOTION OF FRANK
6 CARSON AND GEORGIA DEFILIPPO TO BAR THE RELEASE, CONSIDERATION
7 AND REVIEW OF ANY TAX RECORDS SUBPOENAED AND OBJECTION TO ANY
8 RELEASE, CONSIDERATION, REVIEW, OR EXAMINATION THEREOF and
DECLARATION OF STEPHEN SCHMID IN OPPOSITION TO MOTION TO
RELEASE TOX RETURNS** to be served on the parties to this action as follows:

9 BY MAIL-

10 I placed a true copy thereof, enclosed in a sealed envelope with postage thereon fully
11 prepaid, in the United States mail at Modesto, California, addressed to the parties as set
12 forth on the attached service list. C.C.P. §§1013 (a), 2015.5.

13 BY FEDERAL EXPRESS

14 I retained Federal Express to personally serve a true copy thereof on _____ on the parties
as set forth on the attached service list. C.C.P. §§1013 (c), 2015.5.

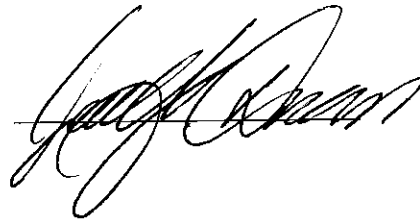
15 BY FACSIMILE TRANSMISSION-

16
17 I am readily familiar with this law firm's business practices for collection and processing
18 of documents by way of facsimile. I telefaxed a true copy thereof at said facsimile
number (s) as set forth on the attached service list. C.C.P. §§1013 (e), 2015.5 and C.R.C.
19 §2008.

20 BY PERSONAL SERVICE- to the Stanislaus County District Attorney

21 I personally served a true copy thereof on the parties as set forth on the attached service
22 list to 832 12th Street, Modesto, CA. C.C.P. §§1011, 2015.5.

23 Executed on January 6, 2016 at Modesto, California.

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SERVICE LIST

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