

1 FREAR STEPHEN SCHMID, CSB NO. 96089
2 ATTORNEY AT LAW
3 177 POST STREET, SUITE 550
4 SAN FRANCISCO, CA 94108
5 TELEPHONE: (415) 788-5957
6 FACSIMILE: (415) 788-5958
7 EMAIL: frearschmid@aol.com

8 Attorney for Intervenor
9 MICHAEL HOYT

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF STANISLAUS

13 In the Matter of the Assumption of
14 Jurisdiction over the Law Practice of
15 FRANK C. CARSON,
16 No. 136261

17) Case No. 2016630

18) **MICHAEL HOYT'S NOTICE OF MOTION
19) AND MOTION TO INTERVENE AND
20) MEMORANDUM OF POINTS AND
21) AUTHORITIES IN SUPPORT THEREOF**

22) **[PROPOSED] VERIFIED COMPLAINT IN
23) INTERVENTION**

24) Date: TBA *Sept 24, 2015*
25) Time: TBA *8:30 am*
26) Dept: TBA *21*

27 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

28 **PLEASE TAKE NOTICE** that as soon as this matter maybe heard at a time, date, and place yet to be determined, MICHAEL HOYT ("Hoyt") will move to intervene in this action. This motion is made on the following grounds: (i) Hoyt is entitled to intervene as of right under C.C.P. §387(b) because Hoyt has a strong, immediate, and concrete interest in defending his rights to his attorney/client relationship and the privacy of his file form intervention from the State Bar, because disposition of this action will impair his ability to protect his interests; and because the existing parties cannot adequately represent those interests; and (ii) alternatively, Hoyt should be granted permissive intervention under C.C.P. §387(a) because he has a strong interest in this action, its

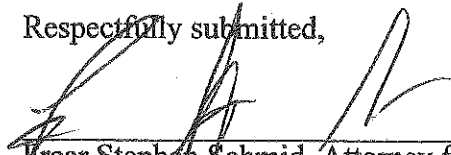
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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
Kathy [Signature]
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1 participation will not enlarge the issues in this litigation, and there are no countervailing interests
2 that outweigh the interests favoring intervention.

3 This motion will be based on this Notice of Motion and Motion and accompanying
4 Memorandum of Points and Authorities; the supporting Declaration of Michael Hoyt; the
5 supporting Request for Judicial Notice; Hoyt's [Proposed] Verified Complaint in Intervention
6 (attached herewith as Exhibit 1); the complete files and records in this matter; and such other
7 matters as may be presented to the Court.

8 DATED: August 31, 2015

Respectfully submitted,

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12 _____
13 Trear Stephen Schmid, Attorney for Intervenor
14 MICHAEL HOYT

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case involves the State Bar's overreaching attempt to destroy an attorney/client relationship, and search and seize client files, and funds belonging to clients in a concerted effort by Stanislaus law enforcement to silence and put out of business the County's best criminal defense attorney.

Accordingly, Hoyt, as a client of Frank Carson, seeks to intervene in this action to defend his interest against this State Bar overreach. As detailed below, Hoyt meets every requirement for intervention as of right and permissive intervention. Hoyt is entitled to intervene as of right because it has a strong, immediate, and concrete interest in this proceeding; because disposition of this action may impair or impede his ability to protect his interests; and because none of the existing parties can represent his interests of Hoyt in this proceeding. Permissive intervention is also proper because intervention will not enlarge the issues, and the interests favoring intervention strongly outweigh any countervailing interests.

II. BACKGROUND

This action rises out of a despicable and vindictive efforts by Stanislaus County local law

1 enforcement to engage in a concerted effort to defeat their number one enemy, Frank Carson.
2 Frank Carson is not a criminal, which law enforcement should be pursuing, but simply is a
3 successful defense attorney who has repeatedly successfully defended defendants as envisioned by
4 our Constitution. Mr. Carson has an outstanding track record which exposes the inability of local
5 law enforcement to properly prosecute and also exposes its corrupt vindictive nature. The moving
6 party attaches hereto and requests judicial notice of the motion to recuse the District Attorney in the
7 action of People of the State of California v. Georgia DeFilippo, Stanislaus County Superior Court,
8 action no. 1490969, which sets out in great detail the completely abhorrent and intellectually
9 dishonest nature of the underlying prosecution against Mr. Carson and clearly exposes the petty
10 vindictive driving forces behind it which are absolutely repugnant to any notion of law and justice.

11 As set forth in the accompanying declaration of moving party, Michael Hoyt, Mr. Hoyt has
12 been a longtime client of Mr. Carson and Mr. Hoyt has a profound respect for Mr. Carson's ability
13 and reposes great trust in him. He does not want, nor does he need the State Bar to act as a "nanny"
14 to serve his interests any more than the State Bar should serve the interests of any of the other
15 clients of Mr. Carson. There is absolutely no indication that any client has sought the intervention
16 by the State Bar in this matter. The State Bar, in a rush to judgment against Mr. Carson, is
17 facilitating, if not acting in concert with the local law enforcement agency to ruin and destroy and
18 take Mr. Carson out of his field of providing competent criminal defense to defendants as
19 guaranteed them by the Sixth Amendment of the U.S. Constitution and under the corresponding
20 constitutional rights under the California Constitution.

21 Mr. Carson has represented Mr. Hoyt successfully in bringing a multi-count case resulting
22 in his acquittal or dismissal on numerous counts and with one count being hung 10-2 in favor of
23 Mr. Hoyt. This matter is set for trial in January 2016. There is absolutely no reason legal authority
24 whereby the State Bar of California can disregard the Fourth Amendment and Article I, Section 1,
25 of the California Constitution guaranteeing Carson's clients' and Mr. Hoyt's files against
26 unreasonable searches and seizures. Nonetheless, the State Bar without any notification to Mr.
27 Hoyt has taken upon itself to seize and review those files at its leisure, not to mention to invade and
28 destroy the existing attorney/client privilege. This manifest injustice is violative of any notion

1 underlying the rule of law and any sense of fair play and substantial justice. As noted by the
2 California Supreme Court of Costco Wholesale Corporation v. Superior Court of Los Angeles
3 County (2009) 47 Cal.4th 725, 732:

4 "The attorney-client privilege, set forth at Evidence Code section 954, confers a
5 privilege on the client 'to refuse to disclose, and to prevent another from disclosing, a
6 confidential communication between client and lawyer' The privilege 'has been a
7 hallmark of Anglo-American jurisprudence for almost 400 years.' (Mitchell v. Superior
8 Court (1984) 37 Cal.3d 591, 599 [208 Cal.Rptr. 886, 691 P.2d 642].) Its fundamental
9 purpose 'is to safeguard the confidential relationship between clients and their attorneys
10 so as to promote full and open discussion of the facts and tactics surrounding individual
11 legal matters. [Citation.] ... [¶] Although exercise of the privilege may occasionally
12 result in the suppression of relevant evidence, the Legislature of this state has
13 determined that these concerns are outweighed by the importance of preserving
14 confidentiality in the attorney-client relationship. As this court has stated: "The
15 privilege is given on grounds of public policy in the belief that the benefits derived
16 therefrom justify the risk that unjust decisions may sometimes result from the
17 suppression of relevant evidence." [Citations.]' (Id. at pp. 599-600.) '[T]he privilege is
18 absolute and disclosure may not be ordered, without regard to relevance, necessity or
19 any particular circumstances peculiar to the case.' (Gordon v. Superior Court (1997) 55
20 Cal.App.4th 1546, 1557 [65 Cal.Rptr.2d 53].)"

14 **III. ARGUMENT**

15 **A. HOYT SHOULD BE PERMITTED TO INTERVENE AS OF RIGHT**

16 C.C.P. §387(b) permits a party to intervene in pending limitation as a matter of right if the
17 party "claims an interest relating to the property or transaction which is the subject of the action
18 and that [party] is so situated that the disposition of the action may as a practical matter impair or
19 impede that [party's] ability to protect that interest, unless that [party's] interest is adequately
20 represented by existing parties ..." Hoyt satisfies all of these requirements, so "the court must allow
21 intervention." 4 Witkin, California Procedure, Pleading §214 (5th ed. 2008).

22 **1. INTEREST IN THE LITIGATION**

23 It requires no extended analysis to show that Hoyt has a strong, immediate and concrete
24 interest in this litigation. Hoyt has a long-established and ongoing attorney/client relationship with
25 Mr. Carson. The petition proposes to destroy that relationship without Hoyt's consent and proposes
26 to allow the seizure and removal of his file without his consent. These proposed actions are
27 extreme, and not supported by any necessity. Therefore, Hoyt has an interest in this action superior
28 to that of any current party.

1 2. **IMPAIRMENT OF INTEREST**

2 Intervention is appropriate here because the disposition of the instant action "may as a
3 practical matter impair or impede" Hoyt's ability to protect and defend his interests in these
4 proceedings. "[T]he standard under Code of Civil Procedure section 387, subdivision (b) is not
5 whether, absent intervention, disposition of the action will destroy the putative intervener's interest
6 in the property or transaction which is the subject of the underlying lawsuit," but merely
7 "whether disposition of the action will as a practical matter impair or impede the intervener's
8 ability to protect that interest." Hodge v. Kirkpatrick Development, Inc. (2005) 130
9 Cal.App.4th 540, 554 (emphasis in original). Here, however, without the ability to intervene and
10 protect its interest, the instant interpleader does have the potential to completely "destroy" Hoyt's
11 interest in the proceeds, i.e. destroy his attorney/client relationship.

12 The potential impairment of Hoyt's interests in these proceedings is absolute and readily
13 satisfies the standard for intervention as a matter of right under C.C.P. §387(b).

14 3. **INADEQUATE REPRESENTATION**

15 None of the existing parties to this litigation can adequately represent the interests of Hoyt,
16 because Hoyt's claim, i.e. his attorney/client relationship is directly personal to him and no other
17 parties.

18 Under these circumstances, it is abundantly clear that other parties' respective interests in
19 this matter are wholly inadequate to represent that of Hoyt.

20 B. **HOYT SHOULD BE GRANTED PERMISSIVE INTERVENTION**

21 Alternatively, the Court should permit Hoyt to intervene under C.C.P. §387(a).
22 Permissive intervention under that section is proper if:

23 "(1) the proper procedures have been followed; (2) the nonparty has a direct and
24 immediate interest in the action; (3) the intervention will not enlarge the issues in
25 the litigation; and (4) the reasons for the intervention outweigh any opposition by
the parties presently in the action."

26 Siena Ct. Homeowners Ass'n v. Green Valley Corp. (2008) 164 Cal.App.4th 1416, 1428
27 (citations omitted). Additionally, C.C.P. §387 should be liberally construed in favor of
28 intervention. Simpson Redwood Co. v. Cal. (1987) 196 Cal.App.3d 1192, 1200. Hoyt

1 satisfies all of these requirements.

2 Hoyt has followed the proper intervention procedures. This motion is accompanied by a
3 "complaint, setting forth the grounds upon which the intervention rests," and in which Hoyt
4 "unites with defendants in resisting the claims of the plaintiff." C.C.P. §387(a). This motion to
5 intervene is timely, because it was filed as soon as practicable following the filing of the
6 petition.

7 For the reasons explained above, Hoyt has a "direct and immediate interest in the action,"
8 which can only be represented by Hoyt. Further, Hoyt's intervention will not enlarge the issues
9 before the Court, it is simply an additional party that seeks to present its particular interests to the
10 Court.

11 **IV. CONCLUSION**

12 For the foregoing reasons, the Court should grant Hoyt's motion to intervene.

13 DATED: August 31, 2015

Respectfully submitted,


14 
15 Prear Stephen Schmid, Attorney for Intervenor
16 MICHAEL HOYT

Exhibit 1

1 FREAR STEPHEN SCHMID, CSB NO. 96089
2 ATTORNEY AT LAW
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF STANISLAUS

13 In the Matter of the Assumption of
14 Jurisdiction over the Law Practice of
15
16 FRANK C. CARSON,
17 No. 136261

18) Case No. 2016630

19) **MICHAEL HOYT'S [PROPOSED] VERIFIED**
20) **COMPLAINT IN INTERVENTION**

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 Intervenor, MICHAEL HOYT, by leave of Court alleges:

23 1. Intervenor Michael Hoyt ("Hoyt") is, and at all times herein mentioned was, a
24 citizen of California, and a resident of Stanislaus County.

25 2. Hoyt intervenes in this action on the grounds that it has a strong, immediate, and
26 concrete interest in defending its rights in this matter and the disposition of this action without
27 Hoyt's presence would, as a practical matter, impede or impair his ability to protect that interest,
28 because the existing parties to this matter will not adequately represent those interests.

3. I am the defendant in the matter of People v. Michael Hoyt, Stanislaus County
Superior Court, action no. 14-14124.

1 4. A trial was had in the matter at which I was represented by Frank C. Carson at which
2 I was acquitted of numerous counts, but the jury hung on a count for involuntary manslaughter, 10-
3 2 in my favor.

4 5. At all times subsequent to the jury verdict in that matter, I have been represented and
5 continue to be represented by Mr. Carson who is thoroughly and intimately familiar with the case,
6 and with whom I have a very trusting relationship and have every confident in his ability to
7 competently and thoroughly represent me.

8 6. There are currently scheduled in my case the following activities:

9 a. January 12, 2016 - Felony Pre-trial

10 b. February 2, 2016 - Jury Trial

11 7. The action against me at this point is purely vindictive by the District Attorney's
12 Office as part of its vindictive actions against Mr. Carson.

13 8. Mr. Carson is a skilled and able criminal defense attorney who has successfully
14 defended numerous defendants in high profile cases in Stanislaus County Superior Court, which has
15 clearly prompted the District Attorney's Office and local law enforcement to conspire to eliminate
16 Mr. Carson as a defense counsel in this county and to destroy his business and therefore
17 purposefully destroy the able representation he provides to defendants, including me.

18 9. Among numerous factors that supports this ongoing action by the District Attorney's
19 Office and local law enforcement to discredit and unjustifiably remove Mr. Carson from his
20 practice of law is the fact that the District Attorney's Office has allowed its so-called "investigator,"
21 Steve Jacobson, from its office to involve himself in the alleged investigation of Mr. Carson
22 notwithstanding the fact that Mr. Jacobson assaulted and battered Mr. Carson unjustifiably in the
23 Courthouse and was involved in litigation with Mr. Carson well before his investigation into the
24 concocted charges now pending against Mr. Carson were initiated. Indeed, Mr. Jacobson was sued
25 by Mr. Carson for his assault and battery, and the matter was specially set for jury trial before Judge
26 Mayhew of this court on August 11, 2015, when mysteriously the trial was "vacated,"
27 "coincidentally" two days before the Ramey Warrant arrest of Carson was made. In addition, Mr.
28 Jacobson recently has (as a part of his revenge against Mr. Carson and as part of the District

1 Attorney's Office's ongoing attempt to silence Mr. Carson's ability to represent defendants)
2 allegedly engaged in jury tampering, which is the subject of a pending court proceeding. A top
3 Deputy District Attorney, Mr. Harris, is also implicated in that jury tampering allegation.

4 10. Since Mr. Carson's arrest, I have been wrongly deprived of Mr. Carson's capable
5 representation due to the conspiracy of various local law enforcement persons to de facto remove
6 Mr. Carson from his practice of law.

7 11. The District Attorney's Office has purposely taken steps to deny me of capable
8 representation by pursuing maliciously trumped up, and meritless charges against Mr. Carson,
9 thereby violating my Sixth Amendment rights to defense counsel.

10 12. I absolutely strongly object to the attempt by the State Bar to intervene in my
11 existing and long-established attorney/client relationship with Mr. Carson and the State Bar's
12 apparent attempt to cooperate with the local district attorney in destroying Mr. Carson's business
13 and his reputation.

14 13. I am perfectly competent to choose my own counsel, and I have never and do not
15 acquiesce in the State Bar (1) depriving me of representation by Mr. Carson or (2) looking at any
16 files of mine or searching any files of mine that are at the offices of Frank Carson and expressly
17 disallow the State Bar to do so.

18 14. I have every confidence that Mr. Carson will be able to represent me in the future in
19 this matter and I do not want the State Bar in any fashion to interlope into my existing attorney/
20 client relationship with Mr. Carson.

21 15. I believe that the State Bar is engaging in absolute bad faith tactics by attempting to
22 involve itself in existing attorney/client relationships where no good cause exists and certainly by
23 doing so, without seeking the consent of individuals that are knowingly represented by Mr. Carson.
24 It would be a very simple procedure for the State Bar to have done a name search of individuals
25 whom Mr. Carson represents and at the very least attempted to ascertain their input before
26 attempting to seize their files, including mine, without my permission and without personal notice
27 to me, and similarly situated clients of Mr. Carson.

1 Re: In the Matter of the Assumption of Jurisdiction over the Law Practice of Frank C. Carson
2 Stanislaus Count Superior Court, Action No.: 2016630

3 **PROOF OF SERVICE**

4 I declare that:

5 I am over the age of 18 and not a party to the within action; my business address is 177
6 Post Street, Suite 550, San Francisco, California, 94108.

7 On August 31, 2015, I served the following document(s):

- 8 1. MICHAEL HOYT'S NOTICE OF MOTION AND MOTION TO INTERVENE
9 AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
10 2. DECLARATION OF MICHAEL HOYT IN SUPPORT OF MOTION TO
11 INTERVENE; and
12 3. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MICHAEL HOYT'S
13 MOTION TO INTERVENE

14 on the parties in said action, by placing true copies thereof in sealed envelopes addressed as
15 shown below for service as designated below:

16 By First Class Mail - I caused each such envelope, with first-class postage thereon fully
17 prepaid, to be deposited in the United States mail at San Francisco, California.

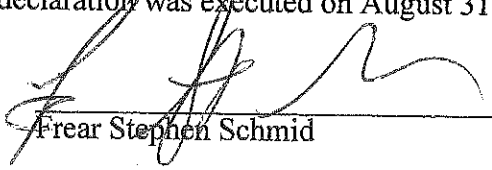
18 By Facsimile - By transmitting a facsimile copy of the above document(s) to the following
19 addressee(s) at the following facsimile number(s):

20 Addressee(s)

21 State Bar of California
22 Office of the Chief Trial Counsel
23 Jayne Kim, Chief Trial Counsel
24 Robert A. Henderson, Supervising Senior Trial Counsel
25 180 Howard Street
26 San Francisco, CA 94105-1639
27 Tel: 415-538-2385
28 [Attorneys for the STATE BAR OF CALIFORNIA]

Kathleen M. Ewins, Esq.
LONG & LEVITT LLP
465 California Street, 5th Floor
San Francisco, CA 94104
Tel: 415-438-4569 Fax: 415-397-6392
[Attorneys for FRANK C. CARSON]

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 August 31, 2015, at San
Francisco, California.


Frear Stephen Schmid