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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR 26 2004

GARY M. BLAIR, Executive Officer
By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

5 Attorneys for National Broadcasting Company,
Inc.; CBS Broadcasting Inc.; Fox News
6 Network L.L.C.; ABC, Inc.; Cable News
Network LP, LLLP; Courtroom Television
7 Network LLC; The Associated Press, *Los*
Angeles Times; and The New York Times
8 Company

9
10 SUPERIOR COURT, STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA BARBARA

12
13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 vs.

17 MICHAEL JOE JACKSON,

18 Defendant.

Case No.: 1133603

**OBJECTIONS OF THE ACCESS
PROponents TO THE SEALING OR
CONDITIONAL SEALING OF: (1) THE
PEOPLE'S APPLICATION FOR AN
ORDER TO SHOW CAUSE RE
CONTEMPT; AND (2) DOCUMENTS AND
RECORDS RELATED TO THE
ADDITIONAL SEARCH WARRANTS
REFERRED TO IN THE COURT'S
MARCH 24, 2004 ORDER**

Date: Friday, April 2, 2004

Time: 8:30 a.m.

Place: Department SM9,
Judge Rodney S. Melville

[VIA FACSIMILE]

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OBJECTIONS OF THE ACCESS PROponents TO THE SEALING OR CONDITIONAL SEALING OF: (1) THE PEOPLE'S APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; AND (2) DOCUMENTS AND RECORDS RELATED TO THE ADDITIONAL SEARCH WARRANTS REFERRED TO IN THE COURT'S MARCH 24, 2004 ORDER

1 Pursuant to this Court's March 24, 2004 Order, the Access Proponents¹ respectfully file these
2 Objections to the sealing or conditional sealing of: (1) the People's Application for an Order to Show
3 Cause re Contempt; and (2) the documents and records related to the "subsequent search warrants
4 [that] have issued" (including the warrants themselves) referred to in the Court's March 24 Order.

5 **1. The People's Application for an Order to Show Cause re Contempt**

6 This Court stated that it was conditionally sealing the People's Application for an Order to
7 Show Cause re Contempt ("the Application") because the Application "relates to the identity of
8 potential witnesses." March 24 Order at 2. Such a basis is insufficient to limit or preclude the
9 public's right of access to the Application under the United States and California Constitutions,
10 California Rule of Court 243.1, and the common law. As a general matter, there is no "overriding" or
11 "compelling governmental interest" in keeping the identity of all potential witnesses in criminal cases
12 secret, and the Court's general finding in this regard is not sufficient to justify sealing the
13 Application. *NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.*, 20 Cal. 4th 1178, 1204 (1999); *Globe*
14 *Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606-07 (1982). No case, statute, rule of court, or other
15 legal authority has ever recognized such a broad secrecy interest.

16 Moreover, assuming the basis for the People's Application was an alleged violation of the
17 Court's Protective Order forbidding communications with "any persons subpoenaed or expected to
18 testify in this matter" (Jan. 23, 2004 Protective Order),² the identity of the potential witnesses in this
19 case has now been revealed to the public through various sources, including the witnesses
20 themselves. Therefore, any effort to shield their names from public view through the sealing of court
21 records which are presumptively open is both ineffective and unnecessary. *See, e.g., NBC*
22

23
24 ¹ The "Access Proponents" refer to National Broadcasting Company, Inc.; CBS Broadcasting Inc.;
25 Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; Courtroom Television
Network LLC; The Associated Press; *Los Angeles Times*; and The New York Times Company.

26 ² Of course, without any indication of the content of the Application and only this Court's general
27 explanation justifying the sealing, the Access Proponents are at a severe disadvantage. The
28 release, at a minimum, of a redacted version of the Application itself would at least provide the
Access Proponents with a better predicate for adequately presenting their arguments to this Court
for the release of the entire document.

1 *Subsidiary*, 20 Cal. 4th at 1223 n.47 (recognizing that the interest in keeping secret certain factual
2 details pertaining to a case becomes more attenuated and more easily outweighed by First
3 Amendment values when those factual details have already been reported and are publicly known).

4 Finally, in the event that any portion of the Application implicates the kind of overriding and
5 compelling interest that would overcome the strong presumption of openness and right of public
6 access, such portions should be selectively redacted and the remainder of the documents must be
7 released. *See* Cal. R. Ct. 243.1(e)(1) (“[a]n order sealing the record must . . . direct the sealing of
8 only those documents and pages, or, if reasonably practicable, portions of those documents and
9 pages, that contain the material that needs to be placed under seal. All other portions of each
10 document or page must be included in the public file.”).

11 2. **The Documents and Records Related to the Additional Search Warrants**
12 **Referred to in the Court’s March 24 Order**

13 The Access Proponents have previously briefed to this Court the binding federal and
14 California authority that establishes a strong presumption against sealing search warrants and other
15 court documents.³ The Access Proponents hereby incorporate those arguments by reference and
16 request that the Court release this latest batch of warrant materials in their entirety and renew their
17 requests that the affidavits (including the original 82-page affidavit) and all other warrant-related
18 materials be released as well.

19
20 ³ *See, e.g.*, Notice of Motion and Motion, Filed by the Access Proponents; Seeking to Unseal
21 Certain Court Records Related to Search Warrant #884686 (filed Jan. 7, 2004); Opposition of the
22 Access Proponents to Plaintiff’s Request for Protective Order (filed Jan. 12, 2004); Reply of the
23 Access Proponents to Defendant’s Opposition to the Access Proponents’ Motion to Unseal
24 Certain Court Records Related to Search Warrant #884686 (filed Jan. 13, 2004); Opposition of
25 the Access Proponents to Plaintiff’s Motions to Seal Certain Search Warrants and Related
26 Documents, as Well as Certain Items to be Lodged by the Sheriff with the Court (filed Feb. 6,
27 2004); Opposition of the Access Proponents to Plaintiff’s Motion to Seal Computer Hard-Drives
28 Search Warrants and Related Documents (filed Feb. 9, 2004); Opposition of the Access
Proponents to Plaintiff’s Motion to Seal Search Warrant No. SW 4912 and Its Related Documents
(filed Feb. 11, 2004); Opposition of the Access Proponents to Plaintiff’s Motion to Seal Search
Warrant No. SW 4915 and Its Related Documents (filed Feb. 11, 2004); Opposition of the Access
Proponents to Plaintiff’s and Defendant’s Motions to Seal Briefs re Attorney-Client and
Attorney-Work-Product Privileges (filed Feb. 13, 2004); Response of the Access Proponents to
Defendant’s Consolidated Response Re Computer Hard-Drives Search Warrant, Seven Telephone
Service Providers Search Warrants, and Search Warrant No. SW 4912 (filed Feb. 13, 2004).

1 As the United States Court of Appeals for the Second Circuit explained just last month in
2 vacating the district court's closure order in another high-publicity felony prosecution:

3 The mere fact that the suit has been the subject of intense media coverage is not,
4 however, sufficient to justify closure. To hold otherwise would render the First
5 Amendment right of access meaningless; the very demand for openness would
6 paradoxically defeat its availability. We take very seriously the fair trial rights of
7 defendants, . . . [b]ut, in general, openness acts to *protect*, rather than to threaten, the
8 right to a fair trial.

9 *ABC, Inc. v. Martha Stewart*, No. 04-0220-cr, 2004 U.S. App. LEXIS 2592, *41 (2d Cir. Feb. 18,
10 2004); *see also id.* at *42 ("Our national experience instructs us that except in rare circumstances
11 openness preserves, indeed, is essential to, the realization of that right and to public confidence in the
12 administration of justice. The burden is heavy on those who seek to restrict access to the media, a
13 vital means to open justice. . . . The mere fact of intense media coverage of a celebrity defendant,
14 without further compelling justification, is simply not enough to justify closure."); *NBC Subsidiary*,
15 20 Cal. 4th at 1223 (holding that litigants' right to a fair trial was not jeopardized in case involving
16 famous litigants and intense media scrutiny, and directing trial court to vacate its closure order).

17 DATED: March 26, 2004

18 Respectfully submitted,

19 GIBSON, DUNN & CRUTCHER LLP
20 Theodore J. Boutros, Jr.
21 Julian W. Poon

22 By: Theodore J. Boutros, Jr.
23 Theodore J. Boutros, Jr.

24 Attorneys for National Broadcasting Company, Inc.;
25 CBS Broadcasting Inc.; Fox News Network L.L.C.;
26 ABC, Inc.; Cable News Network LP, LLLP; Courtroom
27 Television Network LLC; The Associated Press; *Los*
28 *Angeles Times*; and The New York Times Company

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1 **CERTIFICATE OF SERVICE**

2 **MAIL, COMMERCIAL OVERNIGHT MESSENGER, FAX, HAND DELIVERY**

3 I, Lindie S. Joy, hereby certify as follows:

4 I am employed in the County of Los Angeles, State of California; I am over the age of
5 eighteen years and am not a party to this action; my business address is 333 South Grand Avenue,
6 Los Angeles, California 90071, in said County and State; I am employed in the office of Julian W.
7 Poon, a member of the bar of this Court, and at his/her direction, on March 26, 2004, I served the
8 following:

9 **OBJECTIONS OF THE ACCESS PROPONENTS TO THE SEALING**
10 **OR CONDITIONAL SEALING OF: (1) THE PEOPLE'S APPLICATION**
11 **FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; AND (2) DOCUMENTS**
12 **AND RECORDS RELATED TO THE ADDITIONAL SEARCH WARRANTS**
13 **REFERRED TO IN THE COURT'S MARCH 24, 2004 ORDER**

14 on the interested parties in this action, by:

15 **Service by Mail:** placing true and correct copy(ies) thereof in an envelope addressed to the
16 attorney(s) of record, addressed as follows:

17 Thomas W. Sneddon
18 District Attorney
19 Santa Barbara County
20 1105 Santa Barbara Street
21 Santa Barbara, CA 93101-2007

22 Mark J. Geragos
23 Geragos & Geragos
24 350 S. Grand Avenue, Suite 3900
25 Los Angeles, CA 90071-3480

26 I am "readily familiar" with the firm's practice of collection and processing correspondence
27 for mailing. Under that practice it would be deposited with the U.S. postal service on that same day
28 with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

Service by Commercial Overnight Messenger: placing true and correct copy(ies) thereof in
an envelope addressed to the attorney(s) of record, addressed as follows:

and after sealing said envelope I caused same to be delivered to the aforementioned attorney(s) by
qualified commercial overnight messenger.

///

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1 **Service by Fax:** causing a true copy thereof to be sent via facsimile to the attorney(s) of
2 record at the telecopier number(s) so indicated, addressed as follows:

3 **Attorney Name & Address**

Fax and Callback Number

4 Thomas W. Sneddon
5 District Attorney
6 Santa Barbara County
7 1105 Santa Barbara Street
8 Santa Barbara, CA 93101-2007

Facsimile: (805) 568-2398
Telephone: (805) 568-2306

9 Mark J. Geragos
10 Geragos & Geragos
11 350 S. Grand Avenue, Suite 3900
12 Los Angeles, CA 90071-3480

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Telephone: (213) 625-3900

13 and that the transmission was reported as completed and without error.

14 **Service by Hand Delivery:** delivering true and correct copy(ies) thereof and sufficient
15 envelope(s) addressed to the attorney(s) of record, addressed as follows:

16 to a messenger or messengers for personal delivery.

17 I certify under penalty of perjury that the foregoing is true and correct, that the foregoing
18 document(s), and all copies made from same, were printed on recycled paper, and that this Certificate
19 of Service was executed by me on March 26, 2004 at Los Angeles, California.

20 
Lindie S. Joy

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