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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JUL 06 2004

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

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

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12
13 THE PEOPLE OF THE STATE OF
CALIFORNIA,

14 Plaintiff,

15 vs.

16 MICHAEL JOE JACKSON,

17 Defendant.

Case No.: 1133603

**OPPOSITION TO MOTIONS TO FILE
UNDER SEAL FILED SINCE THE JUNE 25,
2004 HEARING**

Date: Friday, July 9, 2004

Time: 8:30 a.m.

Place: Department SM-2,
Judge Rodney S. Melville

[VIA FACSIMILE]

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20 The Access Proponents, a group of media organizations,¹ respectfully file this opposition to
21 any and all motions to file under seal filed since the June 25, 2004 hearing. Neither Mr. Jackson's
22 celebrity status nor the intense public and media interest in this case defeat the public's presumptive
23 rights of access to these core judicial records or to the hearings relating to Mr. Jackson's motions to
24 dismiss the indictment and to suppress evidence. See, e.g., *Press-Enterprise Co. v. Superior Court*,

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26
27 ¹ NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News
28 Network LP, LLLP; The Associated Press; *Los Angeles Times*; The New York Times Company;
and *USA Today*.

1 478 U.S. 1, 15 (1986) ("The First Amendment right of access cannot be overcome by the conclusory
2 assertion that publicity might deprive the defendant of th[e] right [to a fair trial]."); *Nebraska Press*
3 *Ass'n v. Stuart*, 427 U.S. 539, 565 (1976) ("[P]retrial publicity, even if pervasive and concentrated,
4 cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial.");
5 *ABC, Inc. v. Stewart*, 360 F.3d 90, 102 (2d Cir. 2004) ("The mere fact that the [Martha Stewart] suit
6 has been the subject of intense media coverage is not . . . sufficient to justify closure. To hold
7 otherwise would render the First Amendment right of access meaningless; the very demand for
8 openness would paradoxically defeat its availability. We take very seriously the fair trial rights of
9 defendants, . . . [b]ut, in general, openness acts to *protect*, rather than to threaten, the right to a fair
10 trial.") (emphasis added). These are crucial motions in this case,² and the First Amendment and
11 California law require that the proceedings be open to the public.³
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14 Since the June 25 hearing, the Access Proponents have received the following motions
15 requesting that materials be maintained under seal:

- 16 • Defendant's Ex Parte Application To File Under Seal Defendant's Notice Of Motion
17 And Motion To Set Aside The Indictment (Penal Code § 995), Memorandum Of
18 Points And Authorities, and accompanying documents, dated June 29, 2004;

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21 ² See Access Proponents' Notice of Motion and Motion to Unseal Grand Jury Indictment (filed
22 May 18, 2004) (discussing First Amendment right of access to grand jury indictments, and the
23 reasons supporting this right of access); *United States v. Brooklier*, 685 F.2d 1162, 1170 (9th Cir.
24 1982) ("[I]t is clear that the considerations supporting the public's qualified right of access to the
25 criminal trial itself apply as well to hearings on motions to suppress evidence."); *id.* at 1171
26 ("There is no question . . . of the applicability of the public's first amendment right to suppression
27 hearings held during the course of trial. It would elevate form over substance to deny access to an
28 identical proceeding because it began prior to trial.").

³ See also *Press Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1986) ("People in an open
society do not demand infallibility from their institutions, but it is difficult for them to accept
what they are prohibited from observing.") (quoting *Richmond Newspapers, Inc. v. Virginia*, 448
U.S. 555, 572 (1980)) (plurality).

- 1 • Defendant's Ex Parte Application To File Under Seal Defendant's Notice Of Motion
2 And Motion To Traverse Affidavits, To Quash Warrants And To Suppress Evidence
3 Under Pen C § 1538.5; Declaration Of Robert M. Sanger; Memorandum Of Points
4 And Authorities; and accompanying documents, dated June 29, 2004;
- 5 • Plaintiff's Application To Seal 'Plaintiff's Opposition To Defendant's 'Motion To
6 Suppress' On Statutory Grounds,' dated June 30, 2004.

7 The Access Proponents assume that the District Attorney and Mr. Jackson will be filing
8 additional briefs relating to these matters under seal, and oppose such sealing, and the closing of any
9 part of the hearings relating to these issues, as well.

10 The Access Proponents have previously briefed to this Court the federal and California
11 authority that establishes a strong presumption against sealing such judicial records, and the parties'
12 latest submissions once again fail to overcome that presumption. *See generally NBC Subsidiary*
13 *(KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999).⁴ The Access Proponents hereby

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15 ⁴ See, e.g., Notice of Motion and Motion, Filed by the Access Proponents; Seeking to Unseal
16 Certain Court Records Related to Search Warrant #884686 (filed Jan. 7, 2004); Opposition of the
17 Access Proponents to Plaintiff's Request for Protective Order (filed Jan. 12, 2004); Reply of the
18 Access Proponents to Defendant's Opposition to the Access Proponents' Motion to Unseal
19 Certain Court Records Related to Search Warrant #884686 (filed Jan. 13, 2004); Opposition of
20 the Access Proponents to Plaintiff's Motions to Seal Certain Search Warrants and Related
21 Documents, as Well as Certain Items to be Lodged by the Sheriff with the Court (filed Feb. 6,
22 2004); Opposition of the Access Proponents to Plaintiff's Motion to Seal Computer Hard-Drives
23 Search Warrants and Related Documents (filed Feb. 9, 2004); Opposition of the Access
24 Proponents to Plaintiff's Motion to Seal Search Warrant No. SW 4912 and Its Related Documents
25 (filed Feb. 11, 2004); Opposition of the Access Proponents to Plaintiff's Motion to Seal Search
26 Warrant No. SW 4915 and Its Related Documents (filed Feb. 11, 2004); Opposition of the Access
27 Proponents to Plaintiff's and Defendant's Motions to Seal Briefs re Attorney-Client and
28 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);
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 (filed March
26, 2004); Opposition of the Access Proponents to Motion for Order Directing that Search
Warrant Nos. SW 4977 and 4977A, Their Supporting Affidavits and Any Return be Filed and
Maintained Under Conditional Seal Until Further Court Order (filed April 26, 2004); Access
Proponents' Notice of Motion and Motion to Unseal Grand Jury Indictment (filed May 18, 2004);
Access Proponents' Notice of Motion and Motion to Unseal Transcripts of Grand Jury
[Footnote continued on next page]

1 incorporate their prior arguments by reference and request that the Court unseal, to the maximum
2 extent possible, any and all motions to seal filed since the June 25, 2004 hearing.⁵ The First
3 Amendment to the United States Constitution, the California Constitution, Rule 243.1 of the
4 California Rules of Court, and the common law dictate that abstract notions of the Defendant's fair
5 trial right cannot be invoked to create a presumption of secrecy. The materials currently under seal,
6 therefore, must be disclosed and the hearings on Mr. Jackson's motions to dismiss the indictment and
7 to suppress evidence must be open to the public.

8 DATED: July 6, 2004

Respectfully submitted,

9 GIBSON, DUNN & CRUTCHER LLP
10 Theodore J. Boutros, Jr.
11 Dominic Lanza
12 Michael H. Dore

By:


Theodore J. Boutros, Jr.

13 Attorneys for NBC Universal, Inc.; CBS
14 Broadcasting Inc.; Fox News Network L.L.C.;
15 ABC, Inc.; Cable News Network LP, LLLP; The
16 Associated Press; *Los Angeles Times*; The New
17 York Times Company, and *USA Today*

18
19 [Footnote continued from previous page]

20 Proceedings (filed May 18, 2004); Opposition to Motions to File Under Seal and Objections to
21 Procedure for Sealing Records, Including Docket Sheets, and Holding Ex Parte Hearings (filed
22 June 21, 2004); Supplement to Opposition to Motions to File Under Seal and Objections to
23 Procedure for Sealing Records, Including Docket Sheets, and Holding Ex Parte Hearings (filed
24 June 23, 2004).

25 ⁵ The Access Proponents also object to any motions to seal filed prior to June 25, 2004 that were
26 not decided at the hearing. For example, in addition to the motions listed above, Plaintiff filed a
27 Notice Of Motion And Motion For Order That A Certain Request Be Filed Under Seal Until
28 Further Order Of The Court, dated June 24, 2004. Plaintiff also filed a Notice Of Motion For
Order Directing That Plaintiff's Request That Defendant's Certain Motion, Filed June 21, 2004
Under Seal, Be Taken "Off Calendar" Likewise Be Sealed And Remain Under Conditional Seal
Pending Further Order Of The Court, dated June 23, 2004. The Access Proponents object to
these motions and any others filed under seal that have not been explicitly addressed in the
Access Proponents' briefing.

**CERTIFICATE OF SERVICE
BY FAX AND REGULAR MAIL**

I, Diane Smith, hereby certify as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am employed in the office of Theodore J. Boutrous, Jr., a member of the bar of this Court, and at his direction, on July 6, 2004, I served the following:

**OPPOSITION TO MOTIONS TO FILE UNDER SEAL AND OBJECTIONS TO PROCEDURE
FOR SEALING RECORDS, INCLUDING DOCKET SHEETS, AND HOLDING EX PARTE
HEARINGS**

on the interested parties in this action, by the following means of service:

BY MAIL: I placed a true copy in a sealed envelope addressed as indicated below, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.


| | |
|---|---|
| Thomas W. Sneddon District Attorney Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101-2007 Attorneys for Plaintiffs | Tel.: (805) 568-2300 Fax: (805) 568-2398 |
| Thomas A. Mesereau, Jr. Collins, Mesereau, Reddock & Yu LLP 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Attorneys for Defendant Michael Jackson | Tel.: (310) 284-3120 Fax: |
| Robert Sanger Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93001 Co-Counsel for Defendant Michael Jackson | Tel.: (805) 962-4887 Fax: (805) 963-7311 |

BY FACSIMILE: From facsimile number (213) 229-7520, I caused each such document to be transmitted by facsimile machine, to the parties and numbers indicated below. No error was reported by the machine.

| | | |
|--------------------|---|---|
| 1 2 3 4 | Thomas W. Sneddon District Attorney Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101-2007 Attorneys for Plaintiffs | Tel.: (805) 568-2300 Fax: (805) 568-2398 |
| 5 6 7 | Thomas A. Mesereau, Jr. Collins, Mesereau, Reddock & Yu LLP 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Attorneys for Defendant Michael Jackson | Tel.: (310) 284-3120 Fax: (310) 284-3133 |
| 8 9 10 11 | Robert Sanger Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93001 Co-Counsel for Defendant Michael Jackson | Tel.: (805) 962-4887 Fax: (805) 963-7311 |

- 12 I am employed in the office of Theodore J. Boutros, Jr., a member of the bar of this court, and
13 that the foregoing document(s) was(were) printed on recycled paper.
- 14 (STATE) I declare under penalty of perjury under the laws of the State of California that
15 the foregoing is true and correct.
- 16 (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

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 July 6, 2004, at Los Angeles, California.

20
21 
22 Diane Smith

23 MJ.DOC