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SUPERIOR COURT, STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MICHAEL JOE JACKSON,

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]

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

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

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

Since the June 25 hearing, the Access Proponents have received the following motions requesting that materials be maintained under seal:

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

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

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

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

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

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[4] *See, e.g.*, Notice of Motion and Motion, Filed by the Access Proponents; Seeking to Unseal Certain Court Records Related to Search Warrant #884686 (filed Jan. 7, 2004); Opposition of the Access Proponents to Plaintiff's Request for Protective Order (filed Jan. 12, 2004); Reply of the Access Proponents to Defendant's Opposition to the Access Proponents' Motion to Unseal Certain Court Records Related to Search Warrant #884686 (filed Jan. 13, 2004); Opposition of the Access Proponents to Plaintiff's Motions to Seal Certain Search Warrants and Related Documents, as Well as Certain Items to be Lodged by the Sheriff with the Court (filed Feb. 6, 2004); Opposition of the Access Proponents to Plaintiff's Motion to Seal Computer Hard-Drives 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); 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]

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

DATED: July 6, 2004

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutrous, Jr.
Dominic Lanza
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By: Theodore Boutrous, Jr.
Theodore J. Boutrous, Jr.

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

[5] The Access Proponents also object to any motions to seal filed prior to June 25, 2004 that were not decided at the hearing. For example, in addition to the motions listed above, Plaintiff filed a Notice Of Motion And Motion For Order That A Certain Request Be Filed Under Seal Until 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.

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: (310) 284-3133
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

☑ I am employed in the office of Theodore J. Boutrous, Jr., a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.

☑ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed on recycled paper, and that this Certificate of Service was executed by me on July 6, 2004, at Los Angeles, California.

Diane Smith

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