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 03 MAY -8 PM 2:30
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13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

15 PEOPLE OF THE STATE OF
 16 CALIFORNIA,

17 Plaintiff,

18 v.

19 SCOTT PETERSON,

20 Defendant.

CASE NO. 1056770

OBJECTIONS OF CONTRA COSTA
 NEWSPAPERS, INC., McCLATCHY
 NEWSPAPERS, INC., AND THE SAN JOSE
 MERCURY NEWS, INC., TO THE DISTRICT
 ATTORNEY'S MOTION TO SEAL
 AFFIDAVITS

Date: May 9, 2003
 Time: 8:30
 Dept: 2
 Judge: Hon. Al Girolami

BY FAX

21 AND RELATED ACTION: In re Sealed
 22 Search Warrants, Warrant Affidavits, and
 23 Returns, and Arrest Warrant Possible Cause
 Showing—Laci Peterson Investigation
 (Case No. 1045188)

25 I. INTRODUCTION.

26 The news media that have previously appeared seeking access to court records related to
 27 this action request that all proceedings pertaining to the sealing or unsealing of court records be
 28 consolidated before a single judge, that all pending motions or applications for orders relating to

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Filed By
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OBJECTIONS TO THE DISTRICT ATTORNEY'S MOTION TO SEAL AFFIDAVITS

1 the sealing or unsealing of documents be set for hearing on the same date, that the District
 2 Attorney and the Defendant be ordered to submit any showing in support of sealing or in
 3 opposition to unsealing by at least ten days prior to that hearing, and that the News Media submit
 4 their response to any showing by the District Attorney and the Defendant five days before the
 5 hearing. This is the process reflected in the Presiding Judge's minute order making an
 6 Assignment For All Purposes (Case No. 1045098), dated April 1, 2003. Such a process is
 7 necessary in order to ensure an orderly and timely resolution of the issues presented by the
 8 pending motions and existing orders, and in order to prevent potentially inconsistent rulings on
 9 these issues, which have already been the subject of review by the Fifth District Court of Appeal.

10 Inexplicably, the Stanislaus County District Attorney has sought to disqualify this Court
 11 from addressing issues arising from the media's requests for access to court records pertaining to
 12 the investigation and prosecution of Defendant, Scott Peterson, yet now has submitted motions
 13 seeking to have this Court seal records that are the subject of motions to unseal currently pending
 14 before Judge Beauchesne. Furthermore, the District Attorney and the Defendant have joined in a
 15 stipulation providing for the unsealing, delivery to the parties, and resealing of records that are
 16 also the subject of a sealing order issued by the Honorable Roger M. Beauchesne, a writ of
 17 mandate issued by the Court of Appeal, and a pending motion by the news media. In doing so,
 18 the District Attorney has chosen not to serve the media who have appeared in these motions with
 19 any of the papers pertaining to his requests. The District Attorney has offered no explanation for
 20 doing so, even though these actions clearly intrude on matters that are the subject of prior orders
 21 and of motions pending in another court, and despite the fact that the procedure now set in place
 22 by the District Attorney could result in inconsistent rulings on the same records.

23 Contra Costa Newspapers, Inc. (publisher of the *Contra Costa Times*), and the San Jose
 24 Mercury News, Inc. (publisher of the *San Jose Mercury News*) have already filed a motion
 25 seeking access to the previously sealed search warrants and the probable cause showing in
 26 support of the warrant for Defendant's arrest (Case No. 1045188). These newspapers, now joined
 27 by McClatchy Newspapers, Inc. (publisher of the *Modesto Bee*), which has appeared seeking
 28 access to the previously sealed search warrants (Case No. 1045098), object to the District

1 Attorney's attempt to create multiple and potentially conflicting proceedings pertaining to these
2 records.¹

3 **II. BACKGROUND.**

4 Laci Peterson, eight months pregnant, disappeared from her Modesto home on Christmas
5 Eve last year. The investigation into her disappearance was originally classified as a "missing
6 person" case. Eventually, it was reclassified as a homicide case.²

7 On March 7, 2003, the *Modesto Bee* filed a petition seeking access to eight search
8 warrants issued in the investigation of Ms. Peterson's death and related documents, which was
9 joined by KTVU on March 12, 2003. That petition was set by the superior court for hearing on
10 April 2, 2203, before this Court, the Honorable Al Girolami. On or about March 26, 2003,
11 following a minute order issued by the Court indicating that there was no basis for the Court to
12 recuse itself from hearing the petition, the District Attorney demanded peremptory
13 disqualification pursuant to Code of Civil Procedure section 170.6. On or about April 1, after this
14 Court determined that the peremptory challenge by the District Attorney was timely, the
15 Presiding Judge, Honorable David G. Vander Wall, issued an order assigning all proceedings
16 regarding the petition of the *Modesto Bee* and KTVU and another access matter commenced by
17 the *Modesto Bee* to Judge Beauchesne.

18 On April 4, 2003, Judge Beauchesne held a hearing on a petition by the *Modesto Bee* and
19 KTVU regarding the search warrants. In an April 10, 2003 ruling, Judge Beauchesne ordered that
20 the warrants remain sealed. However, Judge Beauchesne's order also provided as follows: "In
21 the event a criminal complaint is filed or an indictment returned and made public as a result of
22 the investigation at issue, the Court's order sealing the eight (8) search warrants, affidavits, and
23

24 ¹ The *Contra Costa Times*, the *San Jose Mercury News*, and the *Modesto Bee* will hereafter be
25 referred to collectively as the "News Media." It is anticipated that additional media will be
joining in the objections to the District Attorney's motion and the motion to unseal now pending
before Judge Beauchesne.

26 ² The following description of the procedural background of this matter is supported by the
27 records of the superior court in the proceedings it describes. The Court has the power to take
28 judicial notice of those records, pursuant to Evidence Code section 452(d) and 453. The News
Media respectfully request that the Court take judicial notice of the prior proceedings in these
matters.

1 returns in their entirety shall be vacated and *each of the documents shall become a public record.*"
 2 (April 10, 2003 Ruling on Petition to Unseal at p. 3, emphasis added.) On April 16, the District
 3 Attorney filed a petition for writ of mandate in the Fifth District Court of Appeal seeking review
 4 of Judge Beauchesne's decision.

5 Eight days after Judge Beauchesne's ruling, Defendant was arrested in San Diego.
 6 Criminal charges were filed against him in this matter and he was arraigned on April 21. He is
 7 currently incarcerated, without bail. The News Media understand that the proceedings in the
 8 criminal prosecution of Defendant (Case No. 1056770) have been assigned to this Court.

9 On April 25, 2003, the *Contra Costa Times* and the *San Jose Mercury News* filed a motion
 10 to unseal the search warrants that were the subject of the *Modesto Bee's* petition. In addition, the
 11 *Contra Costa Times* and the *San Jose Mercury News* sought access to the probable cause showing
 12 made to support the issuance of the warrant for Defendant's arrest (generally referred to as a
 13 "Ramey warrant"). Although the *Contra Costa Times* and the *San Jose Mercury News* originally
 14 filed this motion in the case of *People v. Scott Peterson*, Case No. 1056770, that filing was
 15 rejected by the Clerk of the Superior Court, and they were instructed to refile the matter under a
 16 separate case name and case number. In order to have the matter heard in an expeditious fashion,
 17 they complied.³ The hearing of the motion of the *Contra Costa Times* and the *San Jose Mercury*
 18 *News* was set for May 5, 2003. On April 28, 2003, the District Attorney filed an opposition to the
 19 motion, incorporating the brief filed in opposition to the petition of the *Modesto Bee*.⁴

20 On the morning of May 5, 2003, the hearing on the motion of the *Contra Costa Times* and
 21 the *San Jose Mercury News* was held. Judge Beauchesne declined to rule on the merits of the
 22 motion, issued a stay pending a decision by the Court of Appeal, and continued the hearing to
 23 June 3, 2003. In addition, he directed the Defendant to submit any showing he wished to make in
 24 opposition to the motion prior to the June 3, 2003 hearing.

25

26 ³ The motion was refiled and renoticed as *In re Sealed Search Warrants, Warrant Affidavits, and*
 27 *Returns, and Arrest Warrant Possible Cause Showing—Laci Peterson Investigation*, Case No.
 1045188.

28 ⁴ The *Modesto Bee* will join the motion of the *Contra Costa Times* and the *San Jose Mercury*
News in Case No. 1045188.

1 On the afternoon of May 5, 2003, the Fifth District Court of Appeal issued a peremptory
 2 writ of mandate affirming the portion of Judge Beauchesne's decision on the petition of the
 3 *Modesto Bee* that sealed the eight search warrants that were the subject of that petition. The
 4 Court of Appeal reversed the portion of Judge Beauchesne's order (unchallenged by the District
 5 Attorney) that provided that the search warrant materials would automatically be unsealed upon
 6 the filing of a complaint or indictment. However, it also specifically provided that "[n]othing in
 7 this order forecloses any interested party or entity from re-applying to the superior court for a
 8 release order at an appropriate time in the future and upon a showing of a change in
 9 circumstances." (Opinion, Court of Appeal of the State of California, Fifth Appellate District,
 10 May 5, 2003, at p. 6.)

11 On May 6, 2003, the District Attorney filed a motion to seal the arrest warrant affidavits
 12 sought by the motion of the *Contra Costa Times* and the *San Jose Mercury News*, as well as the
 13 records pertaining to an additional search warrant issued on April 24, 2003. (The District
 14 Attorney gave no direct notice to the News Media that the motion would be made, and has not yet
 15 served the News Media with those papers.) At a hearing held on May 6, 2003, the Court set a
 16 hearing for May 9, directing the District Attorney to lodge these records with the Court on that
 17 date, and providing that if the records were accepted under seal at that time, a hearing on the
 18 motion to seal would be held on May 27, 2003. At the same time, the parties submitted and the
 19 Court approved an order directing that the parties be provided with copies of the search warrants
 20 previously sealed by Judge Beauchesne and addressed in the Court of Appeal's peremptory writ,
 21 subject to an order they not be further disseminated.

22 **III. THE PENDING MOTIONS FOR ACCESS TO OR SEALING OF COURT**
 23 **RECORDS PERTAINING TO THIS CASE SHOULD BE CONSOLIDATED AND**
 24 **DECIDED IN A PROMPT AND ORDERLY FASHION THAT DOES NOT RISK**
 25 **INCONSISTENT RULINGS.**

26 First and most fundamentally, order needs to be restored to a chaotic situation. Forcing
 27 the parties to simultaneously litigate the same issues in multiple proceedings in different courts
 28 does not serve the interests of the parties, judicial economy, or the public's fundamental right of

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1 access to judicial proceedings. The Court has authority under Code of Civil Procedure section
 2 187 to fashion a suitable process or mode of proceeding. Civ. Proc. Code § 187. In addition, the
 3 Court has authority under the Code of Civil Procedure to consolidate separate actions involving
 4 common questions of law of fact and to make orders regarding such proceedings as appropriate to
 5 avoid unnecessary costs or delay. Civ. Proc. Code § 1048. The Court should provide for all
 6 pending motions and proceedings relating to the sealing or unsealing of court records to be
 7 consolidated in a single proceeding, before a single judge, to be heard at the same time. In the
 8 absence of such consolidation, it is entirely possible that different departments of the superior
 9 court will reach entirely different conclusions regarding the unsealing of court records (in
 10 particular the affidavits supporting the issuance of the arrest warrant). Moreover, the parties and
 11 the press will be required to submit multiple filings in the separate proceedings, rather than
 12 addressing the issues only once in papers that address all of the pending issues. Finally, two
 13 courts will be required to address these overlapping proceedings, wasting judicial resources.

14 Second, it is also well established that it is beyond the authority of one department of the
 15 superior Court to interfere with the exercise of judicial power by another department. *See, e.g., In*
 16 *re Ramirez*, 89 Cal. App. 4th 1312, 1317 (2001); *In re Kowalski*, 21 Cal. App. 3d 67, 70 (1971);
 17 *Ford v. Superior Court*, 188 Cal. App. 3d 737, 741-42 (1986). Judge Beauchesne has previously
 18 issued orders pertaining to some of the materials that are the subject of the pending motion by the
 19 *Contra Costa Times* and the *San Jose Mercury News*. In addition, the peremptory writ issued by
 20 the Court of Appeal in the action arising from the petition of the *Modesto Bee* has been directed
 21 to Judge Beauchesne. Therefore, proceedings pertaining to access to the records that are the
 22 subject of Judge Beauchesne's order must either be heard and decided by Judge Beauchesne or
 23 consolidated for hearing before another court pursuant to the Code of Civil Procedure.

24 Finally, the public's right of access to the records that are the subject of these proceedings
 25 is of constitutional dimension. *NBC Subsidiary (KNBC-TV) Inc. v. Superior Court*, 20 Cal. 4th
 26 1178 (1999). Thus, expeditious review and resolution of the motions regarding access to the
 27 court's records in this action is required. A "total restraint on the public's first amendment right
 28 of access [is prohibited] even though the restraint is limited in time." *Associated Press v. United*


1 *States Dist. Court*, 705 F.2d 1143, 1147 (9th Cir. 1983). See also *Elrod v. Burns*, 427 U.S. 347,
 2 373, 96 S. Ct. 2673, 2690 (1976) (“loss of First Amendment freedoms, for even minimal periods
 3 of time, unquestionably constitutes irreparable injury.”); *Paradise Hills Assocs. v. Procel*, 235
 4 Cal. App. 3d 1528, 1538 (1991) (“deprivation of first amendment rights for even minimal
 5 periods constitutes irreparable harm in the context of an action for injunctive relief.”).

6 **IV. CONCLUSION.**

7 For all of the foregoing reasons, the News Media request and will appear on May 9, 2003
 8 to argue that all proceedings pertaining to the sealing or unsealing of court records be
 9 consolidated before a single judge, that all pending motions or applications for orders relating to
 10 the sealing or unsealing of documents be set for hearing on the same date, that the District
 11 Attorney and the Defendant be required to submit any showing in support of sealing or in
 12 opposition to unsealing by at least ten days prior to that hearing, and the News Media submit their
 13 response to any showing by the District Attorney and the Defendant five days before the hearing.
 14 Thereafter, the court to which these proceedings are assigned should adjudicate and promptly
 15 determine all such proceedings.

16 Dated: May 8, 2003.

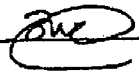
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

CASE NO. 1056770

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

DECLARATION OF SERVICE

v.

SCOTT PETERSON,

Defendant.

BY FAX

21 **AND RELATED ACTION:** In re Sealed
22 Search Warrants, Warrant Affidavits, and
Returns, and Arrest Warrant Possible Cause
23 Showing—Laci Peterson Investigation
(Case No. 1045188)

DECLARATION OF SERVICE

GRAY CARY WARE & FREIDENRICH LLP

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DECLARATION OF SERVICE

I am a resident of the state of California, over the age of eighteen years, and not a party to the within action. My business address is Gray Cary Ware & Freidenrich, 1755 Embarcadero Road, Palo Alto, California 94303-3340. On May 8, 2003, I served the within documents:

OBJECTIONS OF CONTRA COSTA NEWSPAPERS, INC., McCLATCHY NEWSPAPERS, INC., AND THE SAN JOSE MERCURY NEWS, INC., TO THE DISTRICT ATTORNEY'S MOTION TO SEAL AFFIDAVITS

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by consigning such copies in a sealed envelope to an overnight delivery courier for next business day delivery to the person(s) at the address(es) set forth below.

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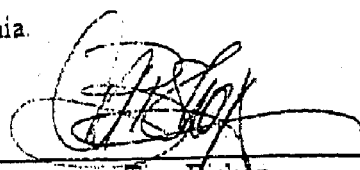
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the 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.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on May 8, 2003, at Palo Alto, California.



Tina Bishop

DECLARATION OF SERVICE

GRAY CARY WARE & FREIDENRICH

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