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FILED
 03 MAY 19 PM 3:41
 CLERK OF THE SUPERIOR COURT
 COUNTY OF STANISLAUS
 BY: *[Signature]*
 DEPUTY

5 Attorneys for Suzanne Fong and Ethan Harp

6
 7 SUPERIOR COURT OF CALIFORNIA
 8 COUNTY OF STANISLAUS

FILED BY FAX

10 IN THE MATTER OF THE APPLICATION OF)
 11 THE DISTRICT ATTORNEY OF THE)
 12 COUNTY OF STANISLAUS, FOR AN ORDER)
 13 AUTHORIZING THE INTERCEPTION OF)
 WIRE COMMUNICATIONS,)

Case No.: 1056270
 NOTICE OF MOTION AND MOTION FOR
 ORDER AUTHORIZING INSPECTION OF
 INTERCEPTED COMMUNICATIONS
 (BY FAX)
 [Penal Code § 629.68]

14 *PEOPLE v. SCOTT PETERSON*

Date: June 6, 2003
 Time: 8:30 am
 Dept.: 2
 Judge: The Honorable Al Girolami

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that, on June 6, 2003, at 8:30 a.m., in Department 2 of this Court,
 21 located at 1100 "I" Street, Modesto, California 95353, Suzanne Fong and Ethan Harp
 22 ("Petitioners"), will and hereby do move this Court for an order, pursuant to Penal Code §629.68,
 23 authorizing them and their counsel to inspect certain intercepted communications.


24 The motion is made on the grounds that the interests of justice are served by enabling
 25 Petitioners to ascertain which of their communications were intercepted in order to evaluate the
 26 content of those communications, and to protect and assert, if appropriate, the constitutional rights
 27 granted them as journalists under Article I, § 2(b) of the California Constitution.
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This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Stephen H. Johanson and on such other matters as may be presented to this Court at the hearing..

Dated: May 19, 2003

Respectfully submitted,
JOHANSON & ASSOCIATES

By: 
Stephen H. Johanson
Attorneys for Suzanne Fong and Ethan Harp

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14 *PEOPLE v. SCOTT PETERSON*

Case No.:

MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF ORDER
 AUTHORIZING INSPECTION OF
 INTERCEPTED COMMUNICATIONS
 (BY FAX)
 [Penal Code § 629.68]

Date: June 6, 2003
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19 **I.**
 20 **FACTS**

21 Suzanne Fong and Ethan Harp are news reporters employed by Hearst-Argyle Television
 22 (KCRA-TV) in Sacramento, California. Both Petitioners have been and are currently assigned to
 23 cover the investigation of the disappearance and death of Lacy Peterson and the prosecution of the
 24 case against Scott Peterson.

25 Petitioners each received a notice that certain of their telephone conversations were
 26 intercepted by a wiretap authorized pursuant to Penal Code § 629.50. Petitioners believe the
 27 intercepted conversations occurred during the course of Petitioners' news gathering activities while

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**II.
PURSUANT TO PENAL CODE § 629.68, THIS COURT SHOULD
EXERCISE ITS DISCRETION AND ALLOW PETITIONERS TO
INSPECT THE INTERCEPTED COMMUNICATIONS.**

Penal Code § 629.68 provides that "[t]he judge, upon filing of a motion, may, in his or her discretion, make available to the person or his or her counsel for inspection the portions of the intercepted communications, applications, and orders that the judge determines to be in the interest of justice." This protection serves a manifest public policy: citizens should be allowed to ascertain which of their conversations the State has recorded and to prevent the dissemination of any privileged communications that have been intercepted. To this end, Penal Code §629.80 expressly declares that otherwise privileged communications do not lose their privileged nature as a result of being intercepted, and mandates that law enforcement officials should not monitor such communications.

Article I, § 2(b) of the California Constitution ("Shield Law") provides that journalists may not be adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public. (Cal. Const., Art. I, § 2(b).)

Under the Shield Law, a prosecutor cannot compel a journalist to reveal unpublished information "obtained in the process of gathering, receiving, or processing information for communication to the public." (*Miller v. Superior Court*, (1999) 21 Cal. 4th 883, 890, 897.) In *Miller*, the California Supreme Court reaffirmed that California's Shield Law "is, by its own terms, absolute rather than qualified in immunizing a newsperson from contempt for revealing unpublished information obtained in the newsgathering process." (*Miller* at 890). The protection afforded journalists under the Shield Law has been broadly interpreted to apply to all information obtained in the newsgathering process, regardless of whether it is confidential or not. (*Delaney v. Superior Court* (1999) 50 Cal. 3d 785 at 799-800.)

In this case, the interests of justice require that Petitioners be allowed to inspect the intercepted communications in order to determine the nature of the communications which were

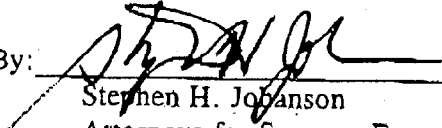
1 intercepted and if necessary to assert their rights under the Shield Law. The constitutional
2 protections granted Petitioners under the Shield Law clearly weigh in favor of the Court exercising
3 its discretion and granting Petitioner's motions.

4 **III.**
5 **CONCLUSION**

6 For the foregoing reasons, Petitioners request that they and their counsel be permitted to
7 inspect any of their communications that were intercepted in connection with the Peterson
8 investigation.

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11 Dated: May 19, 2003

Respectfully submitted,
JOHANSON & ASSOCIATES

12
13 By: 
14 Stephen H. Johanson
15 Attorneys for Suzanne Fong and Ethan
16 Harp
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PROOF OF SERVICE

CASE NAME: *IN THE MATTER OF THE APPLICATION OF THE DISTRICT ATTORNEY
OF THE COUNTY OF STANISLAUS, FOR AN ORDER AUTHORIZING
THE INTERCEPTION OF WIRE COMMUNICATIONS*

COURT: SUPERIOR COURT OF CALIFORNIA COUNTY OF STANISLAUS

CASE NO.:

I am a citizen of the United States and employed in the County of Sacramento. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 2485 Natomas Park Drive, Suite 340, Sacramento, California 95833.

On May 19, 2003 I served the following:

NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING INSPECTION OF INTERCEPTED COMMUNICATIONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ORDER AUTHORIZING INSPECTION OF INTERCEPTED COMMUNICATIONS; DECLARATION OF STEPHEN H. JOHANSON IN SUPPORT OF ORDER AUTHORIZING INSPECTION OF INTERCEPTED COMMUNICATIONS.

(BY MAIL) placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the designated collection area for outgoing mail addressed as set forth below. Johanson & Associate's regular, customary business practice for mailing documents is as follows: the mail is sealed, given the appropriate postage and daily placed in a designated mail collection area; each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

(BY PERSONAL SERVICE) delivering by hand and leaving a true copy with the person at the address shown below.

(BY FACSIMILE) placing a true copy thereof into a facsimile machine addressed to the person and address shown below, which transmission receipt is attached hereto.

(BY FEDERAL EXPRESS) placing a true copy thereof into a Federal Express envelope addressed to the person at the address shown below and placing said envelope into the Federal Express drop off box located at 2485 Natomas Park Drive, Sacramento, California.

Please see attached.

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 May 19, 2003 at Sacramento, California.



Christen Morris

PROOF OF SERVICE (Page 2)

CASE NAME: *IN THE MATTER OF THE APPLICATION OF THE DISTRICT ATTORNEY
OF THE COUNTY OF STANISLAUS, FOR AN ORDER AUTHORIZING
THE INTERCEPTION OF WIRE COMMUNICATIONS*
COURT: SUPERIOR COURT OF CALIFORNIA COUNTY OF STANISLAUS
CASE NO.:

Mark Geragos
Geragos & Geragos
350 S. Grand Ave., #3900
Los Angeles, CA 90071

Rick Disatso
Stanislaus County District Attorney's Office
800 11th Street, Room 200
Modesto, CA 95353