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03 JUN 13 PM 6:19

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY Rose Ann [Signature]
DEPUTY

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FILED BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON,

Defendant.

Case No. 1056770

CONSOLIDATED MOTION FOR (1) RECONSIDERATION OF THE COURT'S JUNE 12, 2003 PROTECTIVE ORDER; AND (2) SETTING OF A HEARING ON OSC RE CONTEMPT OF COURT BY GLORIA ALLRED

DATE: June 26, 2003
TIME: 8:30 a.m.
PLACE: Dept. 2

TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

TO: CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on June 26, 2003 at the hour of 8:30 a.m., or as soon thereafter as counsel can be heard, Defendant Scott Lee Peterson ("Mr. Peterson"), through counsel Mark J. Geragos, will move this Court for (1) an order vacating this Court's June 12, 2003 protective order; and, (2) an order setting a hearing re contempt of the June 12, 2003 protective order by Attorney Gloria Allred.

JUN 13 2003

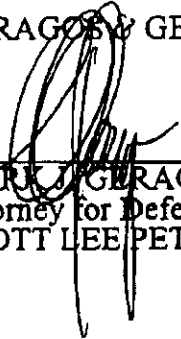
(2)

1 The Motion will be made upon the grounds that: (1) the June 12, 2003 protective
 2 order is unconstitutional and fails to satisfy the *Younger* test on which the Court relied;
 3 (2) the June 12, 2003 protective order is prejudicial to Mr. Peterson and cannot and will
 4 not protect against the disruption of the proper administration of justice; and, (3) on June
 5 12, 2003 Gloria Allred, (counsel for the prosecution's self proclaimed "star" witness
 6 Amber Frey) mocking the authority of this Court, appeared on the nationally broadcast
 7 television show "On the Record" hosed by Greta Van Susteren on the Fox News Channel.
 8 Attorney Allred appeared despite the Court's statements that "all the statements by the
 9 witnesses, all of the rumors and gossip would be rehashed" and "[i]f witnesses are
 10 allowed to discuss publicly their expected testimony or if trial counsel or their staff are
 11 allowed to comment on strategy or on the weight of the evidence. . .it may never be
 12 known if a juror were to rely consciously or subconsciously on the out-of-court
 13 information."

14 The Motion will be based on this Notice, the attached memorandum of points and
 15 authorities, the Declaration of Mark J. Geragos, the pleadings and records on file herein,
 16 and upon such other and further argument as may be presented to the Court at the hearing
 17 of this matter.

18
 19 Dated: June 13, 2003

Respectfully submitted,
 GERAGOS & GERAGOS

By: 

 MARK J. GERAGOS
 Attorney for Defendant
 SCOTT LEE PETERSON

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MOTION

Scott Lee Peterson, by and through counsel, hereby moves the Court for:

1. An order vacating this Court's June 12, 2003 protective order; and or
2. An order setting a hearing re contempt of the June 12, 2003 protective order

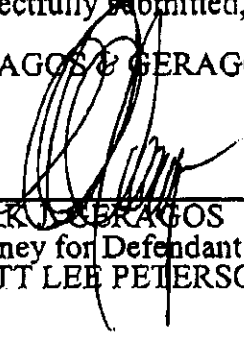
by Attorney Gloria Allred; and,

3. An order granting whatever other relief the Court may deem necessary to further the ends of justice.

Dated: June 13, 2003

Respectfully submitted,
GERAGOS & GERAGOS

By:



 MARK J. GERAGOS
 Attorney for Defendant
 SCOTT LEE PETERSON

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On June 12, 2003 this Court issued a protective order - - for the dual purposes of protecting Mr. Peterson's right to a fair trial and to prevent this very public matter from becoming a circus. Mr. Peterson believes the Court's attempt to achieve these ends was well-intended and admirable. Regrettably, however, within six hours of the issuance of the order it became clear that neither of the Court's purposes can be achieved by such a protective order.

For example, Attorney Gloria Allred, who argued before this very Court during the June 6, 2003 hearing, appeared on a nationally televised program stating that there is no defense to this case and no evidence favorable to the defense.

As predicted by Mr. Peterson's counsel during the June 6, 2003 hearing, the problem with a protective order is:

MR. GERAGOS: [a] proposed witness may or may not be covered by the gag order. Or a protective order. If that person ends up talking, how does either the prosecution or the defense respond to that in any way that makes any sense whatsoever? [¶] That's what I think ends up being the problem, you only can limit a very small universe of people, unfortunately, and that's why I think ultimately what the Court has done so far in this case I think makes the most sense. And that approach is to let the parties try to manage the information, to reveal the information when it is appropriate, and to try to conduct it in, in - - either some of it in camera, some of it released when it's appropriate, when both sides have had time to investigate and be able to present it in a professional fashion.

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Those to me I think are the best prophylactic measures. I don't think that you're going to get anywhere if you have - - if you shut up the people who are sitting at this table, and I don't think that's where the problem is, frankly, with this case and with the misinformation. My dealings have suggested to me that the leaks are coming from places other than at this table, and that the misinformation is coming from places other than at this table, and all we do is at the end of the day get to a point where we can't correct the information, or, if we do, we have to be very genteel about it. . .and we end up having nothing more than a trial by media, if you will, unfortunately, and not a trial by jury.

(See Transcript (rough) of June 6, 2003 proceedings at pp. 57-58.)

Just last night, five hours after this Court issued its ruling, Attorney Gloria Allred appeared on "Fox On The Record With Greta Van Susteren" stating:

ATTORNEY GLORIA ALLRED: [t]he reason that Mr. Geragos had to say if he had evidence that there might be other suspects was because he didn't want the search warrant unsealed, and, in order to have an argument that it should not be unsealed, he had to present that evidence because the whole theory or argument behind keeping it sealed was that it might . . . [s]o that's why the judge [Beauchesne] said since there is no evidence that there are other suspects either presented by the prosecution or the defense, I'm going to unseal it because closing public records is the exception, not the rule.

(See Exhibit 1.)

1 So, despite this Court's protective order, this case continues to be tried in the
2 media in absolute defiance of the provisions of the order that prohibits those covered
3 from:

4 "Mak[ing] any statement for public dissemination as to the existence or possible
5 existence of anyevidence" Court's order page 4, paragraph 3;

6 "Express [ing] outside of court an opinion or make any comment for public
7 dissemination as to the weight, value, or effect of any evidence as tending
8 to establish guilt or innocence.." Court's order page 4, paragraph 4;

9 "Mak[ing] any statement outside of court as to the nature, substance, or effect of
10 any statements or testimony that have been given." Court's order page 4,
11 paragraph 5.

12 Neither Mr. Peterson nor the prosecution has the ability to intelligently respond to
13 the blatant misinformation being bandied about by an attorney who this Court graciously
14 allowed to brief and address on the issue of a protective order. In fact, just this Monday,
15 this same attorney went on national television and stated that she had just recently met
16 with the prosecution.^{1/}

17 II.

18 THE JUNE 12, 2003 PROTECTIVE ORDER IS UNCONSTITUTIONAL
19 AND FAILS TO SATISFY THE *YOUNGER* TEST

20 The June 12, 2003 protective order properly states that the main purpose of a
21 protective order is to allow the defendant to have a fair trial. Unfortunately, this
22 protective order has already caused prejudice to Mr. Peterson because the defense cannot
23 properly and adequately respond to attacks by those connected or claiming to be
24 connected to the prosecution. Of even more pressing importance is the fact, however,
25 that because of the protective order Mr. Peterson cannot intelligently respond to any
26 inaccurate statements. Together, these facts make it clear that this Court must find that the

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¹ See Exhibit 2, Transcript of Larry King Live Interview of June 9, 2003.

1 protective order is unconstitutional because it has caused and will continue to cause a
2 deprivation of Mr. Peterson's right to a fair trial by an impartial jury. In the alternative to
3 a wholesale retraction of the order, the Court should either clarify the scope of the order
4 and the parties that are covered by it.

5 In issuing the protective order, the Court relied on the standard set forth in
6 *Younger v. Smith* (1973) 30 Cal.App.3d 138.² *Younger* sets the standard for protective
7 orders as a "reasonable likelihood of prejudicial news which would make difficult the
8 impaneling of an impartial jury and tend to prevent a fair trial." (June 23, 2003 protective
9 order at page 3.) The Court issued the protective order based in part on its belief that:

10 If witnesses are allowed to discuss publicly their expected
11 testimony or if trial counsel or their staff are allowed to
12 comment on strategy or on the weight of the evidence, even if
13 jurors can be found that are willing to be fair and impartial, it
14 may never be known if a juror were to rely consciously or
15 subconsciously on the out-of-court information.

16 (June 23, 2003 protective order at page 3.)

17 As evidenced by the comments on the defense case by Ms. Frey's lawyer, even
18 though the Court has silenced the defense, other individuals *self proclaimed to be directly*
19 *involved in the case* obviously believe they are free to comment on strategy and the
20 weight of evidence in ways prejudicial to Mr. Peterson. Since the protective order is
21 functioning only to prejudice Mr. Peterson's right to a fair trial it fails to prevent the harm
22 envisioned by the *Younger* court. As such, the Court must either vacate its June 12, 2003
23 protective order, clarify its coverage or enforce violations.

24 _____
25 ²Mr. Peterson notes that the Court applied the *Younger* test, rather than the "clear and present
26 danger of serious imminent threat to a protected competing interest" set forth in *Hurvitz v. Hoefflin*
27 (2000) 84 Cal.App.4th 1232. *Hurvitz* is more recent than *Younger* and *Hurvitz* also involved a far
28 more extensive analysis of federal law than did *Younger*. Although Mr. Peterson believes the
Court's application of the *Younger* test was incorrect, because of the immediate need to raise the
matters discussed in this consolidated motion, Mr. Peterson will analyze the protective order in
terms of the *Younger* standard.

1 III.

2 ATTORNEY GLORIA ALLRED SHOULD BE FOUND IN CONTEMPT

3 In perhaps the most disingenuous statement made by anyone affiliated with this
4 case, Attorney Gloria Allred stated on a nationally televised news program that:

5 Even though . . . I am not covered by [the protective order] I
6 will respect the spirit of it.

7 (See Exhibit 3.)

8 Within minutes of this statement Ms. Allred proceeded to violate the express terms
9 of the protective order. Ms. Allred has stated widely and repeatedly, to anyone who will
10 listen, that the prosecution believes her client Amber Frey is a key witness in this matter.
11 Attorney Gloria Allred has also stated publicly on national television that she met with the
12 prosecution following the Friday, June 6, 2003 hearing before this Court. This Court
13 permitted Attorney Gloria Allred to file papers and argue on the issue of the protective
14 order and she was listed on the proof of service issued by this Court. This Court has
15 specifically imposed the protective order on witnesses expected to testify in this matter.
16 Nevertheless, Attorney Gloria Allred has now stated publicly on national television that
17 she is not subject to the order – but will obey the spirit of same – after which statement
18 she then proceeds to violate the express terms of the order.

19 The can be no “good faith” or innocent explanation for the willful failure to
20 comply with this Court’s protective order. As noted by the Court of Appeal for the Third
21 Appellate District in *People v. Chong* (1999) 76 Cal.App.4th 232:

22 By mocking the court’s authority, an attorney in effect sends a
23 message to the jurors that they, too, may disregard the court’s
24 directives and ignore its authority. This type of attorney
25 misconduct must be dealt with in the jury’s presence in order
26 to dispel any misperception regarding the credence that jurors
27 must give the court’s instructions.

28 (*Chong* at 244.)

1 Here, the Court's protective order is being flouted on national television in front of
 2 millions of people and countless potential jurors (regardless of where the trial is
 3 ultimately held). The protective order has done no more than further exacerbate the
 4 misinformation campaign and prejudice any semblance of a fair trial for Mr. Peterson.

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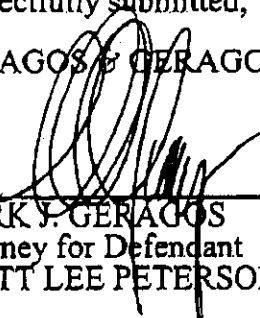
VI.
CONCLUSION

WHEREFORE, in light of the foregoing, Mr. Peterson respectfully requests that
 the relief prayed for herein be granted.

Dated: June 13, 2003

Respectfully submitted,
 GERAGOS & GERAGOS

By:



MARK J. GERAGOS
 Attorney for Defendant
 SCOTT LEE PETERSON

EXHIBIT 1

Fox News June 12, 2003

Hence, the court of appeal still has jurisdiction because the California Supreme Court could interfere with the court of appeal's judgment. They won't. We'll get to see this on July 8, but there's always a chance we wouldn't, and the judge is being careful.

VAN SUSTEREN: You know, the funny thing is, Bernic, we're going to learn so much more, I think, from the search warrants and the affidavits in support of them saying what they seized than we'd ever learn if the parties were talking. I mean even take -- Gloria hasn't been saying anything -- we haven't gotten anything out of Gloria in six weeks.

GRIMM: I mean -- and Gloria has a self-imposed gag order. I mean she's wonderful to look at, but she doesn't say much about her client, which I respect her for. But, once we get these affidavits unsealed, they could take up another three months of shows. I mean they'll be chock-full of so many facts concerning this case, so...

FEIGER: I -- well, I think the biggest thing we've talked about is what Ted's just said, the fact that Geragos presented no credible evidence and looked the judge in the eye in that secret hearing pretty clearly shows all of this was nonsense...

VAN SUSTEREN: Do you think...

FEIGER: ... to begin with.

VAN SUSTEREN: ... though, Geoff, there's a chance he didn't want to tip his hand? Look, every time a defense attorney tips his hand...

FEIGER: No. Wait. Wait. Excuse me. He had to say this to the judge in the closed-door session. He had to. It was the situation where, if he was going to disclose it ever, it was there. And he didn't do it. You know, Ted's right.

GOLDMAN: Greta...

ALLRED: And the reason he had to, Greta, was because -- and, of course, this is all my personal opinion, not Amber's, but the reason he had to...

VAN SUSTEREN: Are we going to have to listen...

ALLRED: ... was because...

VAN SUSTEREN: Are we going to have to hear that now every time...

ALLRED: Yes, you're going to have to hear that on a regular basis.

VAN SUSTEREN: All right. I -- let the viewers know that every time it's your opinion...

ALLRED: Why don't you run it? No. Run it under her -- run a Chyron under her -- Gloria.

VAN SUSTEREN: Yes. We'll put it underneath it, right.

(CROSSTALK)

ALLRED: ... by reference for every time I'm on your show or any show. But, having said that, the reason that Mr. Geragos had to say if he had evidence that there might be other suspects was because he didn't want the search warrant unsealed, and, in order to have an argument that it should not be unsealed, he had to present that evidence because the whole theory or argument behind keeping it sealed was that it might...

FEIGER: That's right.

ALLRED: ... alert other suspects to their investigation.

FEIGER: That's right.

ALLRED: So that's why the judge said since there is no evidence that there are other suspects either presented by the prosecution or the defense. I'm going to unseal it because closing public records is the exception, not the rule.

VAN SUSTEREN: All right. And on that...

FEIGER: That's exactly right.

VAN SUSTEREN: And on that, we get to hear -- Gloria gets the last word, and Geoff does the affirmation. He agrees with it. Thank you very much, all of you.

FEIGER: Exclamation point.

EXHIBIT 2

CNN LARRY KING LIVE 21:00 June 9, 2003 Monday

Scott has been going to Mexico a lot of times. Why? Do they know the reason for going over there?

GRACE: I don't know that they know the reason why. But Ted Rowlands can probably back this up. I think they had a locator, a tracker on his car. So every time he crossed the Mexican border since Laci went missing, I'm sure the police have accounted for it.

KING: Is that right, Ted?

ROWLANDS: They have kept close tabs with Scott throughout this whole investigation. And one thing about Mexico, his family does has some property down there, he's familiar with Mexico, he did go to that convention, that fertilizer convention. So, him traveling to Mexico, per se, is not out of the ordinary, it's not as though he had never been there before. So there was a connection there. He's from San Diego, very close to the border.

KING: Let me get a break and the attorney for Amber Frey will join the panel right after these words. Don't go away.

(COMMERCIAL BREAK)

KING: Joining our panel now is famed attorney Gloria Allred. We'll ask her some questions, the panel may have some questions as well. Report that you and your client met with prosecutors this past weekend, you and Amber Frey. True?

GLORIA ALLRED, AMBER FREY'S ATTORNEY: I met with prosecutors on Friday and I am unable to confirm or to deny as to whether or not Amber met with them.

KING: But they want to go over with her her testimony, right? I mean sometime or other, they're going to have to talk to her, correct?

ALLRED: Generally prosecutors will talk to a witness.

KING: Last week "Hustler" magazine publisher Larry Flynt said he's been approached by a (UNINTELLIGIBLE) who says he owns the rights to about two dozen photos of Amber, many showing her nude. What's your reaction?

ALLRED: Larry, she in no way authorizes anyone to sell or to give away or to publish any posed photos of herself and she is absolutely devastated by this development, she is very hurt by it. And she's just a person who came forward to do the right thing in this case shortly after Laci's disappearance, after she learned that Scott Peterson was Laci's husband.

By the way, a fact she didn't know when she first met Scott Peterson and entered into a relationship with him. She went to law enforcement and provided information that may be relevant to this double homicide investigation.

And now she finds herself in the middle of all this and she cooperated every way with law enforcement, did the right thing, has said she wouldn't do any interviews prior to testifying in a court of law, she won't do it for pay, she wouldn't do it for free because she's respecting the criminal justice system and the integrity of it.

Now she finds herself with this controversy. I think the people who are doing this should be ashamed of themselves.

KING: Did she give the photographer a release?

ALLRED: Well I am presently in a fact-finding situation, attempting to find out what all the facts are. I have corresponded with Mr. Flynt, have informed him that she is not authorizing the publication of any photograph. And he's responded to me and then I have sent him another letter this morning asking him to see the original of any purported release so that I can determine what the true facts are.

KING: Isn't it a defense, though, to -- if the prosecution puts up a witness to question the quality of the witness? That's what any good defense attorney would do. And anything that lends to question credibility, a good defense attorney would be lax if he didn't bring it up.

ALLRED: Well, absolutely, the defense will attempt to question the credibility of any and all witness called by the prosecution.

KING: So why are you shocked by revelations like this that she's a story now? That's the nature of the game.

ALLRED: Well, however, I don't see how this -- even if it is were true, that some photographs were taken some years ago, would have any bearing on her credibility. Amber Frey...

EXHIBIT 3

Fox News June 12, 2003

VAN SUSTEREN: I totally...

FEIGER: Wait, wait.

VAN SUSTEREN: I totally disagree with you. You know why I disagree with you, Geoff...

FEIGER: One...

VAN SUSTEREN: ... is because this judge -- I mean he wrote this. If he doesn't have enough sense to put Gloria's name in it...

FEIGER: I agree.

VAN SUSTEREN: ... and -- Amber Frey's attorney...

FEIGER: I agree.

VAN SUSTEREN: ... you know -- you know, a card play is a card laid.

FEIGER: Here's all...

VAN SUSTEREN: Or a card laid is a card played rather.

FEIGER: Here's all I -- here's all I know, Greta. The producers of your show should be kissing the ground right now because we're the only game in town. We just about eliminated everybody else, so it's only us, folks, because there ain't going to be no defense attorneys and no prosecutors or no police talking about this case. So it's just us!

VAN SUSTEREN: And that's because it's -- it's so overbroad.

All right. Let's switch gears.

ALLRED: Greta.

VAN SUSTEREN: Yes. Go ahead, Gloria.

ALLRED: Can I just say -- I was just going to say that I think the judge knew what he was doing, I think he was right to do it, I do not...

VAN SUSTEREN: That's because he agreed with you.

ALLRED: Well, I know, but I want to say I do not intend to file a writ on this matter, and I do not intend to seek a clarification.

VAN SUSTEREN: Why would you?

ALLRED: Amber will comply.

VAN SUSTEREN: You won. Why would you, Gloria? You'd be crazy to.

ALLRED: Well...

VAN SUSTEREN: I mean come on. You won. Why would you file a writ?

FEIGER: Except...

ALLRED: First of all, let me...

FEIGER: Because he could find her in contempt!

ALLRED: Let me just say -- I'll tell you what I do intend to do, though. I do intend to honor the spirit of it, even though I do not believe -- and, Greta, I think you're right and Geoff as usual is right -- that I am not covered by it. I will respect the spirit of it.

VAN SUSTEREN: Is that a slight at me, Geoff? Greta, you're right, and, Geoff, as usual you're right.

FEIGER: Well, you know, she's got a counterpoint to Bernie.

VAN SUSTEREN: All right. All right. Good point.

All right. Well, let's switch gears. Ted, the search warrants are going to be unsealed July 8. The judge is ruling -- another judge with another way of looking at -- on a change of venue. But what do you think of that order?

PROOF OF SERVICE BY FAXSTATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 350 N. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following

DOCUMENTS OR DOCUMENTS DESCRIBED AS:

CONSOLIDATED MOTION FOR (1) RECONSIDERATION OF THE COURT'S JUNE 12, 2003 PROTECTIVE ORDER; AND (2) SETTING OF A HEARING ON OSC RE CONTEMPT OF COURT BY GLORIA ALLRED

_____ placing a true copy thereof enclosed in sealed envelopes with postage thereon fully prepaid, to the attorneys and their perspective addresses listed below, in the United States Mail at Los Angeles, California.

transmitting by facsimile transmission the above document to the attorneys listed below at their receiving facsimile telephone numbers. The sending facsimile machine I used, with telephone number (213) 625-1600, complied with C.R.C. Rule 2003(3). The transmission was reported as complete and without error.

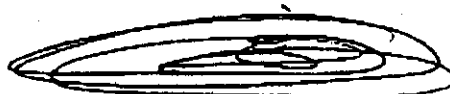
_____ personally delivering the document(s) listed above to the party or parties listed below, or to their respective agents or employees.

PARTIES SERVED BY FAX:

Kirk McAllister, Esq.	209 575 0240
Rick Distaso, DDA	209-525-5545
David Harris, DDA	209-525-5545
Gloria Allred, Esq.	323-653-1660
Charity Kenyon, Esq.	916-779-7120

Executed on June 13, 2003, at Los Angeles, California.

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



RAFFI G. NALJIAN

BROADCAST REPORT

TIME : 06/13/2003 14:31
 NAME : GERAGOS&GERAGOS
 FAX : 2136251600
 TEL : 2136253900
 SER.# : BROL2J854125

PAGE(S)

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