

1 SUSAN E. SEAGER (SBN 204824)

sseager1.clinic@law.uci.edu

2 JACK LERNER (SBN 220661)

jlerner@law.uci.edu

3 UNIVERSITY OF CALIFORNIA IRVINE SCHOOL OF LAW

4 PRESS FREEDOM PROJECT / INTELLECTUAL PROPERTY, ARTS, TECH CLINIC

P.O. Box 5479

5 Irvine, CA 92616-5479

Telephone: (949) 824-5447

6 Fax: (949) 824-2747

7 DAVID LOY (SBN 229235)

dloy@firstamendmentcoalition.org

8 FIRST AMENDMENT COALITION

9 534 Fourth Street, Suite B

San Rafael, CA 94901

10 Telephone: (415) 460-5060

11 Fax: (415) 460-5155

12 Attorneys for Non-Parties

KNOCK LA and

13 FIRST AMENDMENT COALITION

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF LOS ANGELES, NORWALK COURTHOUSE

17 IN RE APPLICATION OF MEDIA
18 COALITION TO UNSEAL SEARCH
19 WARRANT NO. NW20500854
20 AND RELATED COURT RECORDS

) Misc. Case No.

) **NON-PARTY MEDIA COALITION'S**
) **REPLY TO OPPOSITION BY COUNTY**
) **OF LOS ANGELES AND LOS ANGELES**
) **COUNTY SHERIFF'S DEPARTMENT**
) **TO MOTION TO UNSEAL COURT**
) **DOCUMENTS RELATED TO**
) **EXECUTED SEARCH WARRANT;**
) **DECLARATION OF SUSAN E. SEAGER**
) **WITH EXHIBITS D-I**

) Date: September 22, 2022

) Time: 10:30 a.m.

) Dept: SE-F

) Judge: Hon. Margaret Miller Bernal

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ORIGINAL FILED
Superior Court of California
County of Los Angeles
SFP 20 2022
Sharrl R. Carter, Executive Officer/Clerk

M. TRAN

1 **Introduction**

2 Last week, the Los Angeles Sheriff’s Department publicized its 39-page search warrant and
3 affidavit on the same day it served the search warrant on the homes and offices of Los Angeles
4 County Supervisor Sheila Kuehl and other officials in an active investigation with a confidential
5 informant. Yet the Department resists disclosure of the search warrant and affidavit in this case,
6 which apparently does not involve a confidential informant, has not resulted in any charges for over
7 two years, and appears to be entirely closed. The Department’s contradictory behavior presents
8 several important questions. Is the Sheriff’s Department trying to hide its lack of probable cause to
9 search the cell phones of 17 people on September 9, 2020 and that it arrested to punish them for
10 exercising their First Amendment rights to protest the Sheriff’s Department’s brutal killing of Black
11 bicyclist Dijon Kizzee? Why did the Sheriff’s Department ask this Court and a federal court to
12 redact “photos, the faces, and/or names of officers” in the sealed Search Warrant Records when the
13 records were given to two arrestees under a protective order when the deputies were presumably in
14 uniform executing public duties at the September 8, 2020 protest?

15 These questions should be answered by unsealing the Search Warrant Records. The
16 Sheriff’s Department has failed to meet its burden under Penal Code § 1534(a), the First
17 Amendment, Rule of Court 2.550, and the common law to justify keeping these presumptively open
18 Search Warrant Records under seal for two years. The Sheriff’s Department has failed to present
19 evidence that unsealing the Search Warrant Records would reveal a confidential informant or
20 confidential information, or that its investigation is active. It is time for this Court to unseal the
21 Search Warrant Records to shed light on the Sheriff’s Department’s actions.

22 **Statement of Facts**

23 On September 14, 2022, the Los Angeles Sheriff’s Department made a public
24 announcement that it was conducting a “public corruption” investigation into Los Angeles County
25 Supervisor Kuehl and others. Declaration of Susan E. Seager, Exhibit D; also available at
26 <https://lasd.org/public-corruption-investigation/> (last visited on 9/17/2022). Although the Sheriff’s
27 Department said it is conducting an “active investigation” and “we are unable to comment further at
28 this time,” the agency said it wanted to provide “full transparency” and posted its entire 39-page
search warrant and affidavit on its public website just hours after deputies served the search
warrant. Ex. E. The search warrant and affidavit reveal not only the names of the persons whose
homes and offices were searched and computers were seized, but also details about the
investigation, investigative methods, sources of information, the names of the deputies who served

1 the search warrant—all with minimal redactions blacking out only the name of a confidential
2 source, the name of the deputy who signed the affidavit, and some residential addresses. *Id.*

3 Also in contrast to the Sheriff’s Department’s instance on secrecy in this case, a federal
4 judge last month granted various media motions to unseal key portions of a search warrant,
5 affidavit, and return in the ongoing FBI and U.S. Department of Justice federal espionage criminal
6 investigation of former President Trump. *In re Sealed Search Warrant*, – F. Supp. 3d --, 2022 WL
7 3582450 (S.D. Fla. Aug. 22, 2022), Case No. 22-8332-BER (“*In re Search Warrant I*”); *In re*
8 *Sealed Search Warrant*, 2022 WL 366888 (S.D. Fla. Aug. 25, 2022), Case No. 22-8332-BER (“*In*
9 *re Search Warrant II*”); Exs. F-G. Even though the case involved confidential civilian informants
10 and the federal court recognized that “[protecting] the integrity and secrecy of an ongoing criminal
11 investigation is a well-recognized compelling government interest,” the court rejected the DOJ’s
12 request to keep the Trump search warrant materials sealed in their entirety, and ordered a redacted
13 version placed in the public court docket. *In re Sealed Search Warrant I*, 2022 WL 3582450 at *6;
14 *In re Sealed Search Warrant II*, 2022 WL 366888 at *1. See Exs. H-I.

15 **A. The Media Coalition Is Not Bound by This Court’s or the Federal Court’s Previous**
16 **Sealing Orders, Nor Should This Court Be Persuaded by Those Decisions**

17 The Sheriff’s Department admits that the Media Coalition is not estopped from bringing its
18 Motion to Unseal because this Court issued an order on December 14, 2021 denying a request by
19 different parties to unseal the Search Warrant Materials. See generally *Wilson v. Science*
20 *Applications Internat. Corp.*, 52 Cal. App. 4th 1025, 1028 (1997) (“after entry of an order sealing
21 all or part of the record in a civil proceeding, members of the public, who were not parties to the
22 proceeding at the time the order was entered, may challenge the continued need for the order”).

23 The same is true for U.S. District Magistrate Judge Alicia G. Rosenberg’s January 3 and 7,
24 2022 sealing orders; nothing in federal law prevents different parties from moving to unseal this
25 Court’s records. In any event, the federal court considered a different question: whether federal
26 civil rights plaintiffs could unseal state court records for use in their “collateral litigation” in a
27 federal civil rights lawsuit. The federal court’s January 7, 2022 order cited the portions of *Foltz v.*
28 *State Farm Mutual Auto. Ins. Co.*, 331 F.3d 1122, 1130-33 (9th Cir. 2003) dealing with the rights
of access to court records for “collateral litigation,” and cited to *Goldstein v. Long Beach*, 603 F.
Supp. 1242, 1252 (C.D. Cal. 2009) and *U.S. v. Olson*, 2015 U.S. Dist. LEXIS 97136, *6 & nn. 23-
25 (D. Nev. July 24, 2015), which decided whether federal courts could order state courts to
produce state court records for collateral federal litigation. Opposition, Ex. C.

1 The federal court did not discuss—let alone decide—the issues raised in the Media Coalition’s
2 Motion to Unseal: does the First Amendment, Rule of Court 2.550, and common law require
3 unsealing of the Search Warrant Records in whole or in part to vindicate that public right of access?
4 Nor did the federal court discuss or apply the dispositive California law, Penal Code § 1534(a),
5 which mandates that trial courts must unseal executed search warrant records even if there are
6 “ongoing investigations” and employ narrow redactions to protect any confidential sources or
7 confidential information.

7 **B. Because the Sheriff’s Department Has Failed to Provide Evidence of a Confidential**
8 **Informant, Confidential Information, or Active Investigation, Penal Code § 1534(a)**
9 **Requires Unsealing**

9 The Sheriff’s Department incorrectly contends that *People v. Hobbs*, 7 Cal. 4th 948, 971
10 962–63 (1994), *PSC Geothermal Services Co. v. Superior Court*, 25 Cal. App. 4th 1697 (1994), and
11 Evidence Code §§ 1040(a), 1041, and 1042 permit this Court to keep the Search Warrant Records
12 under seal in their entirety. Opp. at pp 6-8. But those authorities and Evidence Code sections do not
13 support sealing here. The *Hobbs* decision simply recognized the government’s common law
14 privilege to protect the identities of confidential government informants, as codified in Evidence
15 Code §§ 1041 and 1042, which permits a court to seal its search warrant records only if confidential
16 informants are mentioned in the search warrant records. *Hobbs*, 7 Cal. 4th at 957-961. Similarly,
17 *PSC Geothermal* held that the official information privilege, as codified in Evidence Code
18 §§1040(a) and 1042(b), permits a court to seal its search warrant records only to protect
19 “confidential informants” and confidential information. 25 Cal. App. 4th at 1714-15.

18 *PSC Geothermal* made clear, however, that even if there are confidential informants or
19 confidential information, the official information privilege is conditional, not absolute, and a court
20 must conduct a two-part test to decide whether the public interest in confidentiality outweighs the
21 public interest in openness. *Id.* Even if a court decides the public interest weighs in favor of keeping
22 the confidential information under seal, the court must “consider[] the possibility of redacting the
23 affidavit and sealing *only the portion ... [containing] official information.*” *Id.* (emphasis added).
24 “[S]ealing the entire affidavit may [be] overbroad.” *Id.* at 1715.

24 But these authorities and the Evidence Code sections play no role in this case because the
25 Sheriff’s Department failed to provide on-the-record evidence that the Search Warrant Records
26 mention a confidential informant or confidential information. In fact, it is unlikely the Sheriff’s
27 Department had time to find a confidential informant or confidential information before asking this
28 Court to sign its Search Warrant on September 9, 2020 *just one day after* deputies arrested the 17
people and seized their cell phones and cameras. The Sheriff’s Department cannot claim it obtained

1 confidential information when questioning those arrestees because “it cannot be maintained that
2 voluntary statements of a criminal suspect to investigating authorities are ‘confidential.’” *Shepherd*
3 *v. Superior Court*, 17 Cal.3d 107, 124 (1976).

4 It is likely that the only evidence the Sheriff’s Department cited in its Search Warrant
5 Affidavit was the so-called “evidence” it had seized one day earlier from the 17 people it arrested—
6 their cameras, cell phones, one named arrestee’s smoke bombs, a megaphone, bicycle, anti-police
7 signs, and other materials. *See* Exhibit A to Motion to Unseal. None of the evidence seized from the
8 17 arrestees is confidential, and all of that evidence is listed in the Sheriff’s Department’s
9 September 8, 2020 Incident Report, which the department freely provides to anyone who requests it
10 under the California Public Records Act. The Media Coalition filed the incident report as a public
11 court document—Exhibit A—with its Motion to Unseal. *Id.*

12 Lacking any on-the-record evidence of a confidential source or confidential information —
13 and likely citing none in its Search Warrant Records – the Sheriff’s Department cannot rely on
14 *Hobbs*, *PSC Geothermal*, or the Evidence Code to support its demand to keep the Search Warrant
15 Records sealed in their entirety. Even if the Sheriff’s Department had admissible evidence of a
16 confidential informant, *PSC Geothermal* made clear that this Court must “consider[] the possibility
17 of redacting the affidavit and sealing only the portion ... [containing] official information” and that
18 “sealing the entire affidavit may [be] overbroad.” 25 Cal. App. 4th at 1714-15.

19 The Sheriff’s Department also urges this Court to maintain its sealing order to “protect an
20 ongoing investigation” (Opp. at p.5) and “to protect the integrity of an ongoing criminal
21 investigation.” Opp. at p. 7. Once again, the Sheriff’s Department provides no evidence that it is
22 conducting an active investigation related to the Search Warrant Records. Presumably the Sheriff’s
23 Department admitted to this Court and the federal court *in camera* that the two September 8, 2020
24 arrestees who filed a motion to unseal the Search Warrant Records—Christina Astorga and Hugo
25 Padilla—were no longer under active investigation because the federal court ordered the Sheriff’s
26 Department to provide the two individuals with 29 pages of redacted Search Warrant Records in
27 January 2022. Opp., Exs. C-D. How many others are no longer under active investigation?

28 Deputies have supposedly been investigating all or some of the 17 arrestees in the two years
since the Search Warrant was obtained on September 8, 2020. Yet the Sheriff’s Department put
forth no evidence that the Sheriff’s Department has submitted the case to prosecutors or is
conducting an active investigation. Simply stating that the statute of limitations for the two alleged
crimes under investigation “has not yet expired” (Opp. at 7) is not evidence of an active probe.

1 Because the Sheriff’s Department has failed to provide evidence that the Search Warrant
2 Records mention any confidential informants or confidential information or that it is currently
3 conducting an active investigation two years after executing the Search Warrant, this Court is
4 required to adhere to California Penal Code § 1534(a)’s mandate that all “documents and records of
5 the court relating to the [search] warrant ... *shall be open to the public as a judicial record*” now
6 that the warrant has been executed. Penal Code § 1534(a) (emphasis added). Presumably, the
7 Search Warrant Records were returned to this Court shortly after execution in September 2020 --
8 two years ago. Two years have passed since this Court initially sealed the Search Warrant Records
9 and nine months have passed since the Court ordered the records remain under seal on December
10 14, 2020. It is time to unseal the records. In the unlikely event that the Search Warrant Records
11 mention a confidential informant or confidential information, the Court should redact only those
12 portions as narrowly as possible and release the remainder of the records. *PSC Geothermal*, 25 Cal.
13 App. 4th at 1714-15.

12 **C. Because the Sheriff’s Department Has Failed to Justify Continued Sealing Under the
13 First Amendment and Rule 2.550, the Records Should Be Unsealed**

14 The Sheriff’s Department cherry-picks a misleading quotation from *Times Mirror Co. v.*
15 *United States*, 873 F.2d 1210, 1218 (9th Cir. 1989): “members of the public have no First
16 Amendment right ... to obtain the documents of [search warrant] proceedings, while the
17 investigation is ongoing but before indictments have been returned.” Opp. at p.5. The Sheriff’s
18 Department neglects to mention that the Ninth Circuit expressly stated in *Times Mirror* that the
19 First Amendment *might* provide right of public access to search warrant court records after “an
20 investigation has been terminated.” *Times Mirror*, 873 F.2d at 1221. The Sheriff’s Department also
21 failed to discuss, much less distinguish, the Eighth Circuit holding that the First Amendment right
22 of access applies to search warrant affidavits filed in court because, “even though a search warrant
23 is not part of a criminal trial itself, like voir dire, a search warrant is certainly an integral part of a
24 criminal prosecution” and is often “at the center of pre-trial suppression hearings.” *In re Search*
25 *Warrant for Secretarial Area Outside Office of Thomas Gunn*, 855 F.2d 569, 573 (8th Cir. 1988).

24 In the same way, neither this Court nor the federal court analyzed a possible First
25 Amendment right of public access to the Search Warrant Records or issued a public sealing order
26 containing “specific, *on-the-record findings*” in compliance with *Press-Enterprise Co. v. Superior*
27 *Court*, 478 U.S. 1, 12-13 (1986) (“*Press-Enterprise II*”). Such an analysis is required now.

27 The Sheriff’s Department erroneously asserts that the California Supreme Court decision,
28 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999), does not apply to this

1 criminal case because it involved a civil matter and didn't expressly decide that the First
2 Amendment applies to criminal search warrant records filed in criminal court. Opp. at pp.7-8. This
3 ignores that *NBC Subsidiary* reaffirmed in great detail the U.S. Supreme Court's longstanding and
4 undisputed recognition of a First Amendment right of access to most criminal court proceedings
5 and various decisions by federal and state lower courts recognizing a First Amendment right of
6 access to most civil court records. *NBC Subsidiary*, 20 Cal. 4th at 1199-1213. The California
7 Supreme Court cited those authorities to support its conclusion that the First Amendment right of
8 access applies to court records, both criminal and civil. *Id.* at 1208 &n.25.

9 Likewise, the Sheriff's Department incorrectly contends that the requirements for sealing
10 court records in Rule of Court 2.550 do not apply to criminal court records. To the contrary, the
11 Advisory Committee Comment for Rule 2.550 expressly states that the rules governing the sealing
12 of court records "apply to ... criminal cases." Advisory Committee Notes, California Rule of Court
13 2.550. The Sheriff's Department also cites the Advisory Committee Note on Rule 2.550 stating that
14 as "search warrant affidavits sealed under" *Hobbs* are exempt from the rule. *Id.* But the *Hobbs*
15 exception applies only to sealing orders protecting confidential informants, and there is no evidence
16 of any confidential informant here.

17 The Sheriff's Department's reliance on *People v. Jackson*, 128 Cal.App.4th 1009 (2005) is
18 equally misplaced. That case involved several highly unusual facts: celebrity pop star Michael
19 Jackson was under an active criminal investigation and facing trial for allegedly sexually abusing
20 minors. The Court of Appeal rejected the media's request to unseal the search warrant documents
21 in part to protect the privacy of the underage alleged victims and because of the "combination of
22 celebrity status, the crimes alleged and the ongoing criminal investigation[.]" *Id.* at 1024. None of
23 those facts or interests are present here. There is no pending criminal trial, celebrity defendant,
24 graphic descriptions of alleged sexual assault, or privacy of underage sexual assault victims to
25 protect. Nor is there is evidence of an ongoing investigation.

26 When considering whether a constitutional presumption of access applies to particular court
27 proceedings or records, courts consider "whether the place and process have historically been open
28 to the press and general public," and "whether public access plays a significant positive role in the
functioning of the particular process in question." *Press-Enterprise II*, 478 U.S. at 8 (citations
omitted). Here, the First Amendment right of public access applies to the Search Warrant Records
in California courts based on the state's historic statutory right of access to executed search warrant
records under Penal Code § 1534(a). The Fourth District of the Court of Appeal recently held that
the public "does not have a First Amendment right to 'Hobbs affidavits'" and affirmed sealing of

1 search warrant affidavits “to protect confidential informant identity” and “investigatory ‘sources
2 and methods.’” *Electronic Frontier Foundation v. Superior Court*, -- Cal. App. 5th --, Case No.
3 E076778, pp. 5, 25 (Cal. Sept. 9, 2022). But the court did not decide the First Amendment (or
4 common law) right of access to search warrant records lacking confidential sources and
5 investigatory methods.

6 The Sheriff’s Department has not come close to meeting its substantial burden to justify
7 sealing under the four-part test established under the First Amendment and codified in Rule of
8 Court 2.550(d) ((1) an overriding interest supports sealing; (2) a substantial probability exists that
9 the interest will be prejudiced absent sealing; (3) the sealing is narrowly tailored to serve the
10 overriding interest; and (4) no less restrictive means exist to achieve the identified overriding
11 interest). Cal. Rule of Ct. 2.550(d); *see also NBC Subsidiary*, 20 Cal. 4th at 1218-19. The Search
12 Warrant Records should therefore be unsealed in their entirety.

13 **D. Because the Sheriff’s Department Has Failed to Justify Continued Sealing Under the
14 Common Law, the Records Should Be Unsealed**

15 The Ninth Circuit held in *The Business of the Custer Battlefield Museum* that “the public
16 has a qualified common law right of access to warrant materials after an investigation has been
17 terminated.” 658 F.3d at 1194, *see also* 1190. But neither this Court nor the federal court
18 considered the common law public right of access to the Search Warrant Records or made the
19 required on-the-record findings to support their sealing orders under the common law. Nor did this
20 Court or the federal consider the holdings of California courts that the common law creates a
21 presumptive right of public access to court records. *See Copley Press, Inc. v. Superior Court*, 6 Cal.
22 App. 4th 106, 108, 117 (1992) (“(C)ourt records are public records open to inspection.”). *See also*
23 *Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 161 (3d Cir. 1993) (“The
24 existence of this [common law] right, which antedates the Constitution and which is applicable in
25 both criminal and civil cases, is now ‘beyond dispute.’”) (citation and quotation marks omitted); *In*
26 *the Matter of 2 Sealed Search Warrants*, 710 A2d 202, 210-11 (Super. Del. 1997) (recognizing
27 common law right of public access to search warrant records filed with court).

28 “As a practical matter, the analyses [for unsealing a court record] under the common law
and First Amendment are materially the same.” *In re Sealed Search Warrant*, 2022 WL 3582450,
*2. “Both look to whether (1) the party seeking sealing has a sufficiently important interest in
secrecy that outweighs the public’s right of access and (2) whether there is a less onerous (or said
differently, a more narrowly tailored) alternative to sealing.” *Id.*

Declaration of Susan E. Seager

1 DECLARATION OF SUSAN E. SEAGER

2 I, Susan E. Seager, declare:

3 1. I am an attorney licensed to practice law before the courts of the state of California.
4 I am an adjunct clinical professor of law at the University of California, Irvine School of Law,
5 Press Freedom Project at the Intellectual Property, Arts, and Technology Clinic, counsel of record
6 for Non-party Media Coalition (First Amendment Coalition and *Knock LA*). I submit this
7 declaration in support of **Non-Party Media Coalition’s Reply To Opposition By County Of Los**
8 **Angeles And Los Angeles County Sheriff’s Department To Motion To Unseal Court**
9 **Documents Related To Executed Search Warrant; Declaration Of Susan E. Seager With**
10 **Exhibits D-J**. The facts stated below are true to my personal knowledge, except those matters
stated on information and belief, which I am informed and believe to be true.

11 2. Attached as Exhibit D is a true and correct copy of the September 14, 2022 Los
12 Angeles County Sheriff’s Department Press Release titled “Multiple Search Warrants Served today
13 in Connection with Ongoing Public Corruption Investigation.”

14 3. Attached as Exhibit E is a true and correct copy of the Search Warrant and Affidavit
15 signed by Los Angeles Superior Court Judge Craig Richman on September 8, 2022.

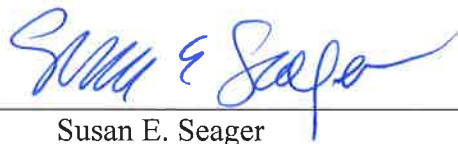
16 4. Attached as Exhibit F is a true and correct copy of *In re Search Warrant*, 2022 WL
17 3582450, Case No. 22-8332-BER (S.D. Fla. Aug. 22, 2022).

18 5. Attached as Exhibit G is a true and correct copy of *In re Search Warrant*, 2022 WL
19 3656888, Case No. 22-8332-BER (S.D. Fla. Aug. 25, 2022).

20 6. Attached as Exhibit H is a true and correct copy of *In Re Sealed Search Warrant*
21 Case No. 22-8332-BER, Notice of Filing of Redacted Documents, filed August 11, 2022.

22 7. Attached as Exhibit I is a true and correct copy of *In Re Sealed Search Warrant Case*
23 No. 22-8332-BER, Second Notice of Filing of Redacted Documents, filed August 15, 2022.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this Declaration was executed on the 20th day of September 2022, in
26 Los Angeles, California.

27 
28 _____
Susan E. Seager