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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

16 JANET BURKLE,

17 Petitioner,

18 vs.

19 RONALD W. BURKLE,

20 Respondent.

21) Case No. **BD390479**
22)
23) **NON-PARTY PRESS**
24) **ORGANIZATIONS' REQUEST TO**
25) **INTERVENE TO OPPOSE EX PARTE**
26) **APPLICATION OF RESPONDENT**
27) **RONALD W. BURKLE TO SEAL**
28) **COURT RECORDS AND**
) **PROCEEDINGS; MEMORANDUM OF**
) **POINTS AND AUTHORITIES;**
) **DECLARATION OF SUSAN E. SEAGER**
) **WITH EXHIBITS A-F**
)
) Judge: Hon. Roy L. Paul
) Dept.: S
) Date: December 21, 2004
) Time: 1:30 p.m.
)
) Cal. R. Ct. 243.2(h)(2)

23 Non-party press organizations Los Angeles Times Communications LLC, dba Los Angeles
24 Times, and The Associated Press (collectively, "Press Organizations") respectfully request leave to
25 intervene in this matter for the limited purpose of opposing respondent Ronald W. Burkle's ex parte
26 application to seal court records. The Press Organizations also requests the Court to consider the
27 attached brief in Opposition to Mr. Burkle's ex parte application, and to permit The Press
28 Organizations' counsel to be heard. This Opposition is based on the First Amendment to the

1 | United States Constitution, Article I, §§ 2-3 of the California Constitution, the common law, and
2 | California Rules of Court 243.2(h)(2) and 244.1(g), which allow non-parties to be heard concerning
3 | the sealing of court records, including records filed with a privately compensated judge.¹
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26 | ¹ The press has standing to assert the public's – and its own – rights of access to various
27 | court records and proceedings. Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 610 n.24
28 | (1982); NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal. 4th 1178, 1181 (1999). See
also Cal. R. Ct. 243.2(h)(2) (“a party or member of the public may move, apply, petition.... to
unseal a court record”).

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MEMORANDUM OF POINTS AND AUTHORITIES

**1.
SUMMARY OF ARGUMENT**

As the California Supreme Court made clear in the palimony/fraud trial of celebrities Clint Eastwood and Sondra Locke, the First Amendment to the United States Constitution and the common law provide a presumptive right of public access to court proceedings and documents. NBC Subsidiary, 20 Cal. 4th at 1208 & n.25; 1211 n.27, 1218-19. These rights do not disappear merely because the proceedings involve wealthy, powerful people; to the contrary, the public's interest in ensuring that equal treatment is given in such cases arguably is even stronger. Furthermore, the presumptive openness that applies to court proceedings and records includes disputes involving personal relationships – as in the Eastwood/Locke trial in NBC Subsidiary – as well as those involving personal financial matters, as in the case at hand. Indeed, even before NBC Subsidiary, California courts recognized that divorce files were presumptively open to the public and press. See, e.g., Green v. Uccelli, 207 Cal. App. 3d 1112, 1120 (1989) (“[t]he contents of the file of a divorce proceeding are ‘historically and presumptively’ a matter of public record,” and divorcing parties must recognize that they are “entering a public forum which would result in the public disclosure of private facts”); In re Marriage of Lechowick, 65 Cal. App. 4th 1406, 1413-14 (1998) (“court files in family law cases should be treated no differently than the court files in other cases for purposes of considering the appropriateness of granting a motion to seal any of those files”); In re Shortridge, 99 Cal. 526, 530-31 (1893) (vacating contempt order against reporter for reporting about divorce proceeding). See also Estate of Hearst, 67 Cal. App. 3d 777, 783-84 (1977) (recognizing common law right of access to probate court records over objection of prominent Hearst family, which asserted fears of terrorism and violence).

Under these authorities, the public and press have a presumptive right of access to the proceedings and records in this divorce case. Respondent Ronald W. Burkle is listed by Forbes magazine as one of the “World’s Richest People” with a personal worth of \$2.3 billion in 2004, and his holdings are detailed in over 40 public filings with the federal Securities and Exchange Commission. (Exs. A-B.) Mr. Burkle has placed himself in the public eye as a prolific political

1 donor and fundraiser, described by this Court as “the largest contributor to the Democratic Party in
2 the United States.” (Ex. Cat 4.) Petitioner Janet Burkle has accused him of hiding millions of
3 dollars in assets and coercing her into signing a 1997 Post-Marital Agreement that requires their
4 divorce to be decided by a private judge paid by Mr. Burkle. The public interest in scrutinizing
5 proceedings involving this undeniably wealthy and powerful man, and the serious accusations
6 leveled against him, cannot seriously be disputed.

7 Yet Mr. Burkle is asking this Court to seal virtually the entire court file and proceedings –
8 including court orders and judgments – in his acrimonious divorce case. Mr. Burkle is relying on a
9 new secrecy statute, Family Code § 2024.6, which requires the automatic sealing of any divorce
10 court document that discloses the financial assets of one of the parties. Curiously, this new statute
11 was signed into law as “urgency legislation” by Gov. Arnold Schwarzenegger on June 7, 2004 –
12 just months after this Court denied Mr. Burkle’s previous request to seal divorce court records
13 containing financial information – and shortly after Mr. Burkle and his companies donated
14 \$121,200 to the governor’s political committees on March 1, 2004. (Ex. D at 3.)

15 This Court should reject Mr. Burkle’s latest bid to hide his divorce proceedings and his
16 financial asset information from the public. Even assuming that Family Code § 2024.6 provided
17 for the blanket sealing of the entire divorce file – which it does not – this hastily enacted statute is
18 flatly unconstitutional because it requires the trial court to seal divorce court records, including
19 court orders and judgments, without providing for the document-by-document analysis and
20 threshold inquiries required by the First Amendment.

21 Similarly overbroad blanket sealing or closure statutes have been struck down as
22 unconstitutional infringements on the public’s right of access to court records and proceedings. For
23 example, in Globe Newspaper, 457 U.S. at 609-611, the Supreme Court held unconstitutional a
24 Massachusetts statute that required trial courts to exclude the public and press from criminal trials
25 during the testimony of minor sex crime victims. The Court held that the statute violated the First
26 Amendment because it did not “requir[e] the trial court to determine on a case-by-case basis”
27 whether closure and sealing was necessary to protect an overriding interest. Id. at 606. The Court
28 also held that the statute was unconstitutional because it did not recognize that openness “permits

1 the public to participate and serve as a check upon the judicial process – an essential component in
2 our structure of self-government.” Id.

3 This same analysis makes clear that Section 2024.6 violates the First Amendment. Divorce
4 proceedings and documents have long been open to the public and press. See Green, 207 Cal. App.
5 3d at 1120; Lechowick, 65 Cal. App. 4th at 1413-14. Public oversight is crucial in divorce cases,
6 where court decisions about the dividing of community assets and child custody impact thousands
7 and thousands of people every year. Public scrutiny is especially important in a case like this one,
8 where one of the parties is politically and financially powerful and has been accused of hiding
9 financial assets. Mr. Burkle has not demonstrated that a compelling interest justifies the broad
10 closure and sealing order, or that he can overcome the presumptive public right of access to these
11 court proceedings or records. His request for a sealing order, therefore, should be denied.

12 **2.**
13 **STATEMENT OF FACTS**

14 On June 13, 2003, petitioner Janet Burkle filed a Dissolution of Marriage Petition against
15 respondent Ronald Burkle in Los Angeles County Superior Court. The proceedings have focused
16 largely on the validity of the couple’s 1997 Post-Marital Agreement and the custody of their child.
17 Mr. Burkle has asserted that the agreement requires the divorce and custody dispute to be decided
18 by a private judge, and this Court has assigned the case to Los Angeles County Superior Court
19 Stephen M. Lachs (ret.). Mrs. Burkle is contesting the validity of the agreement, including the
20 provision requiring their divorce proceedings to be decided by a private judge. This Court has
21 retained jurisdiction to decide motions to seal court records and proceedings.

22 Earlier this year, Mr. Burkle filed a motion to seal the couple’s Post-Marital Agreement, any
23 document that quotes the Post-Marital Agreement, account balance information, and documents
24 related to the couple’s minor child and custody issues. This Court issued an eight-page order on
25 March 13, 2004, denying Mr. Burkle’s broad sealing order request, sealing only bank names and
26 account numbers and limited information about the couple’s child, such as the name of his school.
27 (Ex. C.) Analyzing the motion under California Rule of Court 243.1, and the constitutional and
28 common law right of public access to judicial records, this Court held that Mr. Burkle could not

1 show a compelling interest in sealing the agreement and his financial account balance information.
2 (Id. at 5-8.) The Court noted that Mr. Burkle is “one of the wealthiest men in the world, is known
3 as the largest contributor to the Democratic Party in the United States and his net worth, as
4 analyzed by Forbes Magazine, ranks him as 111th on the Forbes 400 with net worth in excess of \$2
5 Billion.” (Id. at 4; see also Exs. A-B.) Indeed, as reported by the media, Mr. Burkle loaned “two of
6 his six houses to Sen. John Kerry last spring for star-packed fund-raisers,” and Burkle’s “buddies”
7 included former President Bill Clinton, Michael Jackson, Jesse Jackson and Sean (P. Diddy)
8 Combs. (Ex. E-F.)

9 On June 7, 2004, Gov. Schwarzenegger signed into law Assembly Bill 782, which became
10 effective immediately “as an urgency statute” as Family Code § 2024.6. The parties in this case
11 have jokingly called the bill the “Burkle amendment” during court proceedings because it followed
12 almost immediately after Mr. Burkle’s failed request to seal his financial asset information. The
13 new statute attempts to reverse a century of open divorce proceedings and documents in California,
14 ostensibly to protect parties from identity theft and their children from kidnappings. Under the
15 statute, upon the request of one party, the court is required to seal any court document that “lists the
16 parties’ assets and liabilities and provides the location or identifying information about those assets
17 and liabilities,” without any analysis or input from the other party or the public. Cal. Fam. Code §
18 2024.6(a). The statute places the burden on the party seeking public access to show “good cause”
19 to support unsealing. Id.

20 Based on this statute, Mr. Burkle now asks this court to seal essentially the entire court file
21 and trial transcripts, by seeking a sealing order for any pleading, attachment, document, paper,
22 exhibit, transcript or other record filed or lodged with the Court that contains identifying
23 information listing any party’s financial assets. Remarkably, Mr. Burkle also requests the sealing
24 of any order or judgment issued by this Court or any other Court that contains similar financial
25 information, so that even the ultimate decision of the Court would remain shielded from all public
26 scrutiny.

3.
**THE CONSTITUTIONAL AND COMMON LAW RIGHTS OF PUBLIC ACCESS TO
JUDICIAL PROCEEDINGS AND RECORDS APPLY TO THESE DIVORCE COURT
RECORDS.**

**A. Civil Proceedings and Records, Including Documents Filed in this Divorce Proceeding,
Are Presumptively Open to the Public under the First Amendment, California Rule of
Court 243.1 and the Common Law.**

In NBC Subsidiary, the California Supreme Court held that the public has a right of access to criminal and civil proceedings and records under the First Amendment to the United States Constitution, Article I, § 2(a) of the California Constitution, and common law. 20 Cal. 4th at 1208 & n.25. The Court's sweeping, unanimous decision relied on numerous decisions upholding a First Amendment "presumption of access ... [to any] documents or records of ... [judicial] proceedings [that] are filed with the court or are used in a judicial proceeding." Id.

The Supreme Court rejected the argument offered by the trial court that the public right of access did not extend to the acrimonious palimony/fraud trial between Eastwood and his former girlfriend, actress Sondra Locke, because it was a "purely private dispute[]." Id. at 1210-11.² Emphasizing that a "trial court is a public governmental institution," the Court instructed that "[l]itigants certainly anticipate, upon submitting their disputes for resolution in a public court, before a state-appointed or publicly elected judge, that the proceedings in their case will be adjudicated to the public." Id. at 1211. Thus, "an individual ... involved as a party to a civil case is entitled to a fair trial, not a private one." Id. Moreover, the Court explained, "the public has an interest, in all civil cases, in observing and assessing the performance of its public judicial system, and that interest strongly supports a general right of access in ordinary civil cases." Id. at 1210.

The Court also made clear that this right of access extends to criminal and civil court records, citing with approval several other court decisions that have "found a First Amendment right of access to civil litigation documents filed in court as a basis for adjudication." Id. 1208

² One reason the trial court closed the Eastwood/Locke proceedings was to prevent disclosure of inflammatory allegations, including Locke's allegation that Eastwood encouraged her to undergo an abortion. Id. at 1187 n.4. Despite this arguably sensitive information, however, the Supreme Court held that none of the reasons offered by the trial court were adequate to justify closure. Id. at 1222.

1 n.25. Thus, the “presumption of access [applies when] the documents or records of such
2 proceedings are filed with the court or are used at a judicial proceeding.” Id.

3 Particularly instructive here, the Court cited with approval the decision in Lechowick, in
4 which the Court of Appeal vacated an order sealing divorce court records. NBC Subsidiary, 20
5 Cal. 4th at 1196 n.11. Indeed, the Court of Appeal in Lechowick concluded that “court files in
6 family law cases should be treated no differently than the court files in other cases for purposes of
7 considering the appropriateness of granting a motion to seal any of those files.” 65 Cal. App. 4th at
8 1412, 1413-14.

9 The NBC Subsidiary Court also cited with approval the Court of Appeal decision ordering
10 disclosure of the Hearst family probate files in Estate of Hearst, despite the Hearst family’s safety
11 concerns after the kidnapping of Patricia Hearst. As the California Supreme Court observed,
12 ““when individuals employ the public powers of state courts to accomplish private ends, they do so
13 in full knowledge of the possibly disadvantageous circumstance that the documents and records
14 filed will be open to public inspection,”” and must ““take the good with the bad, knowing that with
15 public protection comes public knowledge’ of otherwise private facts.” NBC Subsidiary, 20 Cal.
16 4th at 1211 n.27, quoting Estate of Hearst, 67 Cal. App. 3d 777, 783-84 (ellipses omitted).

17 In the wake of NBC Subsidiary, the Judicial Council voted to amend California Rules of
18 Court 243.1 and 243.2 to require that “unless confidentiality is required by law, court records are
19 presumed to be open.” Cal. R. Ct. 243.1(c). A trial court “must not permit a record to be filed
20 under seal based solely on the agreement or stipulation of the parties.” Cal R. Ct. 243.2(a).³

21 In addition to the constitutional access rights recognized by the California Supreme Court,
22 the United States Supreme Court has recognized that the public and the press have a common law
23

24 ³ This constitutional and common law right of public access to court proceedings and
25 records extends to non-mediation legal proceedings conducted by “private” judges, both when the
26 parties have agreed to have legal or factual matters heard by a privately paid judge pursuant to
27 C.C.P. § 638, or when the trial court orders the matter referred to a privately paid judge pursuant to
28 C.C.P. § 639. See Cal. R. Ct. 244.1(e), (f) (g) (proceedings conducted by private judge under
C.C.P. § 638 are open to the public and “motion to seal records in a cause before a privately
compensated referee must be served and filed and must be heard by a presiding judge or judge
designed by the presiding judge”); Cal. R. Ct. 244.2(g) (proceedings conducted by private judge
under C.C.P. § 639 “must be open to the public upon request of any person”).

1 “right to inspect and copy public records and documents, including judicial records and
2 documents.” Nixon v. Warner Communications, 435 U.S. 589, 597-98 (1978). Similarly,
3 California courts have held that the common law protects the public’s right of access to court
4 records. Estate of Hearst, 67 Cal. App. 3d at 784. There, the court vacated the trial court’s blanket
5 sealing orders that closed the entire Hearst family probate file, rejecting the family’s assertions that
6 closure was necessary because family members had been threatened and victimized by various
7 radical groups, including the Symbionese Liberation Army’s kidnapping of Patricia Hearst. Id. at
8 871, 784-85. The court explained that “traditional Anglo-American jurisprudence distrusts secrecy
9 in judicial proceedings and favors a policy of maximum public access to proceedings and records of
10 judicial tribunals.” Id. Thus, “[a]bsent strong countervailing reasons, the public has a legitimate
11 interest and right of general access to court records.” Id.

12 As these authorities make clear, the Burkles’ divorce proceedings and court records are
13 presumptively open to the public and press under the First Amendment and common law.

14 **B. Family Code § 2024.6 Is Unconstitutional.**

15 State statutes that require courts to enter blanket sealing or closure orders, without allowing
16 for a case-by-case analysis evaluation, violate the strict threshold requirements under the First
17 Amendment. In Globe Newspaper example, the Supreme Court struck down as unconstitutional a
18 Massachusetts statute that required trial courts to exclude the public and press from any criminal
19 trial during the testimony of underage sex crime victims. 547 U.S. at 610-610. Although the
20 Supreme Court recognized that the state had a legitimate interest in protecting the well-being of
21 minors and to encourage them to come forward to report sex crimes, it held that the blanket closure
22 order was not “narrowly tailored” to protect this interest because it did not permit “a trial court to
23 determine on a case-by-base whether the State’s legitimate concern for the well-being of the minor
24 victim necessitates closure.” Id. at 609. The Court also held that the blanket ban on public access
25 did not allow for “[p]ublic scrutiny” of the trial, which “enhances the quality and safeguards the
26 integrity of the factfinding process.” Id. at 606. Cf. Press-Enterprise Co. v. Superior Court, 478
27 U.S. 1, 12-13 (1986) (“Press-Enterprise II”) (holding that California Supreme Court incorrectly
28 relied on state statute in determining whether public and press should be excluded from preliminary

1 hearing; “[t]he standard applied by the California Supreme Court failed to consider the First
2 Amendment right of access to criminal proceedings”).

3 In California, divorce proceedings traditionally have been open to the public and press.
4 Indeed, more than a century ago, the California Supreme Court condemned the punishment of a
5 newspaper reporter who had published an account of a divorce court proceeding that was closed by
6 the trial court. In re Shortridge, 99 Cal. at 530-31. In that case, the Court held that the contempt
7 order issued against the reporter violated the state’s constitutional free speech protections. “In this
8 country it is a first principle that the people have a right to know what is done in their courts,” the
9 Court explained, and “the greatest publicity to the acts of those holding positions of public trust,
10 and the greatest freedom in the discussion of the proceedings of public tribunals that is consistent
11 with truth and decency are regarded as essential to public trust.” Id.

12 As the Court of Appeal subsequently explained in Green, 207 Cal. App. 3d at 1120, divorce
13 court files and proceedings are “‘historically and presumptively’ a matter of public record.” The
14 court cautioned that any individual who files an action for marital dissolution in superior court in
15 California “should ... realize[]” that they are “entering a public forum which would result in public
16 disclosure of private facts.” Id.

17 As these authorities make clear, Section 2024.6 is unconstitutional because it does not
18 consider the tradition of public access to court proceedings and documents in California, nor the
19 considerable value that public oversight affords to the public, the parties, and the judicial system
20 itself. The statute also is unconstitutional because it does not allow for a case-by-case, document-
21 by-document analysis. The statute requires this Court to seal a wide variety of court records –
22 including, according to Mr. Burkle, the court’s own orders and judgments – without any evaluation
23 of the competing interests involved. Finally, the statute violates the First Amendment because it is
24 not narrowly tailored to further the State’s interest in protecting the parties and their children. The
25 statute, according to Mr. Burkle, does not merely require court redactions of bank account numbers,
26 but requires the sealing of entire pleadings that mention financial assets and their “location.” Under
27 this broad interpretation of the statute, a party could mention financial asset information in every
28 court record, and then ask the court to seal that record in its entirety. This is absurd. Because the

1 statute does not allow an evaluation of the competing interests and is not narrowly tailored to
2 further the state's interest in protecting litigants from identify theft, Section 2024.6 is
3 unconstitutional.

4 In the alternative, if this Court elects not to find the statute unconstitutional, the statute must
5 be construed in accordance with the requirements of the First Amendment.⁴ In NBC Subsidiary,
6 the Court instructed that any judicial interpretation of Family Code § 214, which allows courts to
7 close some divorce proceedings under certain circumstances, must “take into account rules of
8 procedure and substance ... [in accordance with] the First Amendment [.]” 20 Cal. 4th at 1206
9 n.11. Similarly, the Court also held that Code of Civil Procedure § 124, which requires that “the
10 sittings of every court shall be public,” must be interpreted in a manner consistent with the access
11 requirements under the First Amendment, and therefore could not be read in a way that would
12 permit trial courts to restrict public access that otherwise would be constitutionally mandated. Id. at
13 1192 n.8, 1197.⁵

14 If Section 2024.6 is construed consistently with the First Amendment, the statute must be
15 construed to permit this Court to conduct the analysis described in NBC Subsidiary and Rule 243.1
16 and 243.2. This Court must conduct a document-by-document analysis, and seal or redact
17 documents only if Mr. Burkle demonstrates that there is a compelling interest in secrecy for the
18 particular information that overcomes the presumptive right of public access in these documents.

20
21 ⁴ On November 2, California voters amended the California Constitution, declaring that
22 “[t]he people have the right of access to information concerning the conduct of the people’s
23 business” and that any “statute, court rule, or other authority ... shall be ... narrowly construed if it
24 limits the right of access.” Cal. Const., Art. I., § 3(b)(1), (b)(2). Because the conduct of judicial
25 proceedings is “the conduct of the people’s business,” the public has a presumptive right of access
26 to all judicial proceedings and documents under this new amendment. The amendment also
27 requires this Court to narrowly construe Section 2024.6 to permit maximum public access.

28 ⁵ Family Code § 214 provides that “the court, may, when it considers it necessary in the
interests of justice and the persons involved, direct the trial of any issue of fact joined in a
proceeding under this code to be private, and may exclude all persons except the officers of the
court, the parties, their witnesses, and counsel.” NBC Subsidiary, 20 Cal. 4th at 1191 n.7.
However, as the California Supreme Court observed, this statute allows for a case-by-case analysis,
and therefore can be applied in a manner consistent with constitutional mandates. In addition, the
Supreme Court’s discussion of Lechowick makes clear that any closure or sealing orders in divorce
cases must meet the First Amendment standard for closure. Id. at 1195 n.11.

1 The statute also must be narrowly tailored to protect litigants' interest in avoiding identity theft, and
2 to prevent litigants from mentioning financial asset information to seal court records in their
3 entirety. Only specific identifying information, such as bank account numbers, should be redacted.
4 Mr. Burkle cannot meet this substantial burden to establish that virtually the entire divorce court
5 records and transcripts must be sealed, as discussed more fully below.

6 **4.**
7 **THERE IS NO JUSTIFICATION FOR KEEPING ALL OF THESE COURT RECORDS**
8 **AND PROCEEDINGS SECRET.**

9 As the California Supreme Court made clear in NBC Subsidiary, this Court's interpretation
10 of Section 2024.6 must be guided by the First Amendment, the common law and the California
11 Rules of Court. Under NBC Subsidiary, and Rule of Court 243.1(d), court records may not be
12 sealed absent a finding: (1) that an overriding interest supports sealing; (2) that a substantial
13 probability exists that the interest will be prejudiced absent sealing; (3) that the sealing is narrowly
14 tailored to serve the overriding interest; and (4) that no less restrictive means exist to achieve the
15 identified overriding interest. 20 Cal. 4th at 1218-19; Cal. Rule of Ct. 243.1(d).

16 Courts have recognized that any closure order must be supported by specific factual
17 findings, and by a detailed discussion of what interest is being protected and why less restrictive
18 alternatives do not adequately protect that interest. See NBC Subsidiary, 20 Cal. 4th at 1225.
19 California Rule of Court 243.1(e)(1) affirms that any sealing order "must (i) specifically set forth
20 the [1] facts that support the [2] findings, and (ii) direct the sealing of only those documents and
21 pages [3], or, if reasonably practicable, portions of those documents and pages [4] that contain the
22 material that needs to be placed under seal."

23 **A. Public Policy Favors Open Court Divorce Court Files.**

24 As the United States Supreme Court explained in Press-Enterprise Co. v. Superior Court,
25 464 U.S. 501, 508 (1984) ("Press-Enterprise I"), "[t]he value of openness lies in the fact that people
26 not actually attending trials can have confidence that standards of fairness are being observed," and
27 this openness enhances both the "basic fairness" of the proceeding and "the appearance of fairness
28 so essential to public confidence in the system." Similarly, in Estate of Hearst, 67 Cal. App. 3d at

1 784, the Court of Appeal emphasized that if proceedings “are conducted in private, it becomes
2 impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism.”

3 It is important that the public maintain its traditional oversight over divorce proceedings.
4 Some 160,000 men and women file for divorce in California each year.⁶ More than 100,000
5 California children are affected by divorce proceedings annually, and an average of 84,000 child
6 custody cases are mediated annually. Marital dissolution proceedings often involve some of the
7 state’s most pressing criminal, social, and economic issues, including the division of community
8 property, financial child support, and child custody disputes. The superior court litigation and
9 resulting appellate court decisions do not decide merely “private disputes” between family
10 members, but creates law that governs families, and reflects changing perceptions of the roles,
11 relationships, and responsibilities of married couples who ultimately seek divorce. See, e.g.,
12 Marvin v. Marvin, 18 Cal. 3d 660 (1976) (in palimony lawsuit, deciding as a matter of first
13 impression that courts must enforce contracts between cohabiting couples, even if not legally
14 married).

15 Because the documents filed in these divorce proceedings are presumptively open to the
16 public and press under the federal and state constitutions, the common law and Rule 243.1, and
17 because public policy favors open divorce court files, Mr. Burkle must make an especially rigorous
18 showing to demonstrate the need for secrecy in this case.

19 As this Court already recognized in its March 14, 2004 order, Mr. Burkle cannot overcome
20 the public’s presumptive right of access to court records that reflect his personal wealth. As this
21 Court correctly noted, the Burkles are “of high public interest” because of Mr. Burkle’s
22 considerable wealth and influence in political circles. Furthermore, Mr. Burkle’s financial worth
23 and the source of his wealth already are well known, due in large part to Mr. Burkle’s numerous
24 public SEC filings and media reports about his financial activities. Mr. Burkle also invited public
25 scrutiny by donating large sums to high-profile political candidates and hosting political fundraisers

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27 ⁶ These statistics come from the California Judicial Council annual reports, available on its
28 website, <http://www.courtinfo.ca.gov/presscenter/ataglance.htm> and
http://www.courtinfo.ca.gov/reference/3_stats.htm.

1 for Democratic presidential candidate John Kerry. Having thrust his financial and political
2 activities into the public realm, Mr. Burkle cannot now complain that he requires secrecy. Mr.
3 Burkle simply cannot demonstrate that permanently sealing all of these divorce court records –
4 including pleadings and court orders in their entirety – is necessary to promote a compelling
5 interest. To the extent that this Court still concludes that limited redactions, such as bank account
6 numbers, are necessary to protect a compelling interest that overcomes the public right of access to
7 court documents, this Court should narrowly tailor those redactions.

8 **B. Mr. Burkle Should Not Be Granted Special Treatment Due To His Considerable**
9 **Wealth And Political Influence.**

10 Numerous decisions confirm that a litigant's wealth, celebrity, or influence cannot override
11 the public's right of access to court records and court proceedings. There is no celebrity exception
12 to the First Amendment. As the Second Circuit Court of Appeals recently explained in the criminal
13 trial of Martha Stewart, "[t]he mere fact of intense media coverage of a celebrity defendant, without
14 further compelling justification, is simply not enough to justify closure." ABC, Inc. v. Stewart, 360
15 F.3d 90, 106 (2d Cir. 2004). See also NBC Subsidiary, 20 Cal. 4th at 1222 (same for
16 palimony/fraud trial of celebrities Eastwood and Locke); Estate of Hearst, 67 Cal. App. 3d 777,
17 783-84 (same for probate files of wealthy and influential Hearst family). The fact that Mr. Burkle
18 is one of the wealthiest men in the world, is described by this Court as the largest contributor to the
19 Democratic Party in the United States, and donated over \$100,000 to the Republican governor who
20 signed legislation that directly benefited him, all weighs strongly in favor of public access to Mr.
21 Burkle's divorce proceedings and files. Where, as here, the interests of wealthy and powerful
22 individuals are involved, public scrutiny of the judicial process is even more important. Closed
23 proceedings in such situations give rise to the unfortunate perception of special justice for the rich
24 and well connected. This perception has a profoundly corrosive effect on our judicial system as
25 well as our other democratic institutions.

26 Public oversight is especially important in this case, where Mrs. Burkle alleges that she was
27 coerced into signing a Post-Marital Agreement that requires her divorce litigation to be decided by
28

1 a privately paid judge who operates outside of the public courthouse. This case demands a minimal
2 amount of secrecy and a maximum amount of openness.

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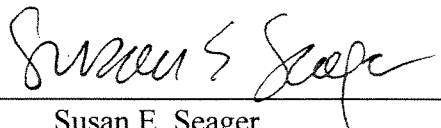
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CONCLUSION

Based on these authorities, the Press Organizations request that this Court deny Mr. Burkle's ex parte application to seal court documents and trial transcripts. To the extent that some of the information contained in these court records contains bank account numbers and the names of banks, and there is a compelling need to keep this information secret that overrides the public right of access to court records, this Court should redact only that specific information. Sealing court records solely to protect Mr. Burkle from embarrassment or media attention is not an adequate ground for a blanket sealing order. Making these records available to the public is not only required by the First Amendment and the Rules of Court, it is essential to ensuring public confidence in the fairness of the judicial system.

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