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San Francisco County Superior Court

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

10  
11 **THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

12 Plaintiff,

13 v.

14  
15 **DAVID ROBERT DALEIDEN and  
SANDRA SUSAN MERRITT,**

16 Defendants.  
17

Case No. 2502505/17006621

**PEOPLE'S REQUEST FOR SAFETY  
LIMITATION ON PUBLIC COMMENTS**

Date: September 9, 2019

Time: 1:30 p.m.

Dept: 23

Judge: The Honorable Christopher Hite  
ASSIGNED FOR ALL PURPOSES

18 The Attorney General of the State of California respectfully submits this Request for Safety  
19 Limitation on Public Comments to protect the safety of the Doe witnesses.

20 **STATEMENT OF FACTS**

21 California Department of Justice Special Agent Brian Cardwell interviewed Doe 12 after  
22 her preliminary hearing testimony on Thursday, September 5, 2019 in this Department. In that  
23 interview, Doe 12 expressed fear and harassment she and her company have suffered immediately  
24 after her testimony. Attached is Agent Cardwell's report as Exhibit A.

25 The news site lifesite news quotes one of Daleiden's counsel discussing, inaccurately,  
26 testimony of Doe 12. The link to the article is within Exhibit A. The CMP Twitter account has  
27 also been describing testimony by the Does in an almost live feed. (Exhibit B) In so doing, the  
28

1 CMP Twitter account has essentially identified the Does, if not by name then by title and  
2 organization. Attached as Exhibit B are screen captures of the CMP Twitter feed from last.  
3 Additionally, Defendant David Daleiden was scheduled to appear on the Fox News show Tucker  
4 Carlson on September 5, 2019 wherein he would have had the opportunity to discuss details of  
5 the testimony by Doe 12 and other Does. Fortunately, his appearance was postponed.

## 6 STATEMENT OF LAW

### 7 I. ORDER TO RESTRAIN DISSEMINATION OF VICTIM INFORMATION

8 *Steiner v. Superior Court* (2013) 220 Cal.App.4th 1479, 1486:

9 “Orders which restrict or preclude a citizen from speaking in advance are known as  
10 ‘prior restraints,’ and are disfavored and presumptively invalid.” (*Hurvitz v. Hoefflin*  
11 (2000) 84 Cal.App.4th 1232, 1241 [101 Cal. Rptr. 2d 558], fn. omitted (*Hurvitz*); see  
12 Nebraska Press, supra, 427 U.S. at p. 559 [“[P]rior restraints on speech and  
13 publication are the most serious and the least tolerable infringement on First  
14 Amendment rights.”].) An order restricting the speech of trial participants, typically  
15 known as a “gag order,” is a prior restraint. (*Hurvitz*, at pp. 1241–1242; *Saline v.*  
16 *Superior Court* (2002) 100 Cal.App.4th 909, 915–916 [122 Cal. Rptr. 2d 813].)  
17 Although the right to a fair trial is also a protected constitutional right, a court seeking  
18 to ensure a fair trial may not impose a prior restraint unless “ ‘the gravity of the  
19 ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is  
20 necessary to avoid the danger.’ ” (Nebraska Press, at p. 562.) “[F]ree speech and fair  
21 trials are two of the most cherished policies of our civilization, and it [is] a trying task  
22 to choose between them.” (*Bridges v. California* (1941) 314 U.S. 252, 260, 62 S.Ct.  
23 190, 86 L.Ed. 192.) On the one hand, the First Amendment recognizes “ ‘a general  
24 right to inspect and copy public records and documents, including judicial documents  
25 and records.’ ” (*United States v. Inzunza* (S.D.Cal.2004) 303 F.Supp.2d 1041,1044,  
26 quoting *Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, 597, 98 S.Ct.  
27 1306, 55 L.Ed.2d 570.) On the other hand, a trial judge has “an affirmative duty to  
28 control adverse publicity to protect the right of an accused to a fair trial.” (*In re*  
*Willon* (1996) 47 Cal.App.4th 1080, 1093, 55 Cal.Rptr.2d 245, citing *Sheppard v.*  
*Maxwell* (1966) 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600.) 10 \*1022

### 21 II. VICTIM INTIMIDATION AND RIGHT TO PRIVACY

22 The defendants are attempting to dissuade and distress the victims in this matter. They  
23 have consistently referenced every hallmark associated with the victims in an attempt to interfere  
24 with their livelihood, safety, and testimony.

25 “[t]here is, of course, no talismanic requirement that a defendant must say ‘Don’t testify’ or  
26 words tantamount thereto, in order to commit the charged offenses. As long as his words or  
27 actions support the inference that he . . . attempted by threat of force to induce a person to  
28

1 withhold testimony [citation], a defendant is properly' convicted." (*People v. Mendoza* (1997) 59  
2 Cal.App.4th 1333, 1344.)

3 The magic words "do not testify or else" never appear, but the intent is there.

4 The courts retain wide discretion to protect against disclosure of information that might  
5 "unduly hamper the prosecution or violate some other legitimate governmental interest." (*Joe Z.*  
6 *v. Superior Court* (1970) 3 Cal.3d 797, 804.) This situation is akin to a not so stealthy attempt to  
7 curtail the victims Marsy's Rights and protection against intimidation. No matter the fortitude of  
8 the victim, the intent of the parties to dissuade is present.

9 Pursuant to Marsy's Law, crime victims have the constitutional right to privacy and dignity  
10 throughout the criminal justice process, as well as freedom from intimidation, harassment and  
11 abuse. (Cal. Const. art. I § 28, subd. (b)(1).) The defendants have instigated a campaign in  
12 besmirching the dignity of the victims of this case, regardless of their lack of success in such, and  
13 are violating the premise of victim protection the courts hold close.

14 "Victims also have the right to be reasonably protected from the Defendant and persons acting on  
15 behalf of the Defendant and the right to prevent disclosure of their confidential information to  
16 Defendant, Defendant's attorney, or other persons working on behalf of the Defendant. (Cal.  
17 Const. art. I §§ 28, subd. (b)(2) and (b)(4).)

18 These rights are personally held and enforceable by the victim, their authorized  
19 representative, or the district attorney prosecuting the case in any trial or appellate court with  
20 jurisdiction over the case as a matter of right. (Cal. Const. art. I § 28, subd. (c)(1).) The trial  
21 court must act promptly in response to such a request. (Cal. Const. art. I § 28, subd. (c)(1).) The  
22 specific rights enumerated in Marsy's Law are not exclusive and do not disparage any other rights  
23 possessed by crime victims. (Cal. Const. art. I § 28, subd. (d).)

24 Albeit the victims in this matter exude a sense of strength and professionalism, our  
25 obligations to ensure safety, right to privacy, and freedom from intimidation in fulfilling court  
26 ordered testimony, the law protects them as all other victims.

1 **III. ORDER FOR TO ENSURE PRIVACY AND SANCTITY OF PROCEEDINGS**

2 In the performance of that duty, a trial judge may remove from public scrutiny a recording  
3 containing data or material that, if publicized prior to trial, could result in publicity so inherently  
4 prejudicial as to endanger a fair trial. (*Craemer v. Superior Court* (1968) 265 Cal.App.2d 216,  
5 225, 71 Cal.Rptr. 193; see also *Press-Enterprise Co. v. Superior Court* (1984) 464 U.S. 501, 508,  
6 104 S.Ct. 819, 78 L.Ed.2d 629 [“No right ranks higher than the right of the accused to a fair  
7 trial”]; see also *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1075, 111 S.Ct. 2720, 115  
8 L.Ed.2d 888 [“Few, if any, interests under the Constitution are more fundamental than the right to  
9 a fair trial by ‘impartial’ jurors, and an outcome affected by extrajudicial statements would violate  
10 that fundamental right”].) Nonetheless, “pretrial publicity, even if pervasive and concentrated,  
11 cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial.”  
12 (*Nebraska \*\*605 Press Assn. v. Stuart* (1976) 427 U.S. 539, 565, 96 S.Ct. 2791, 49 L.Ed.2d 683.)

13 Our Supreme Court set forth the test to be used in balancing these two precious rights. In  
14 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 86 Cal.Rptr.2d  
15 778, 980 P.2d 337 (*NBC Subsidiary*), the court exhaustively reviewed United States Supreme  
16 Court and Federal Circuit Court of Appeals opinions that speak to the issue of public access in  
17 criminal and civil cases. The court concluded that most judicial proceedings and records are  
18 subject to a presumption of openness. When the presumption applies, the public has a qualified  
19 right of access. That right may be denied only if the court, after notice and hearing, makes four  
20 supported findings: “(i) there exists an overriding . . . interest supporting closure and/or sealing; (ii)  
21 there is a substantial probability ... that the interest will be prejudiced absent closure and/or  
22 sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the overriding  
23 interest; and (iv) there is no less restrictive means of achieving the overriding interest.” (*Id.* at p.  
24 1218, 86 Cal.Rptr.2d 778, 980 P.2d 337, fns. omitted.) These principles are codified in California  
25 Rules of Court, rule 243.1.

26 NBC Subsidiary holds that “protecting minor victims of sex crimes from the trauma and  
27 embarrassment of public scrutiny” could justify limiting public access to court documents. (*NBC*  
28 *Subsidiary, supra*, 20 Cal.4th at pp. 1206–1207, 86 Cal.Rptr.2d 778, 980 P.2d 337.) We have

1 reviewed the affidavit and agree with the trial court that sealing was necessary to protect these  
2 overriding interests.

3 The affront to the victims' privacy and safety in this matter must be addressed.  
4

5 **ARGUMENT**

6 The safety of the victims is of paramount concern. If allowed to identify the Does, discuss  
7 their testimony and incite fringe elements with inflammatory rhetoric, their safety continues to be  
8 at risk. The People respectfully request this Court exercise its discretion to limit the statements  
9 the parties may make in public in regards to the witness testimony until after the conclusion of the  
10 preliminary hearing. The situation at hand is a "slow burn" attempt to disrupt the victims' lives,  
11 and ultimately, the integrity of these proceedings.

12 **CONCLUSION**

13 For all the foregoing reasons, the People respectfully request this Court order the  
14 defendants to not reference the victims or any matter which may be taken to identify them or their  
15 livelihood in any matter. We request an order to protect the safety of the Does witnesses.  
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18 Dated: September 9, 2019

Respectfully Submitted,

19 XAVIER BECERRA  
20 Attorney General of California



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