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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

In re Sealed Warrant #CSW 59058 &
Response with Redactions, or

SIGNAL MESSENGER, LLC,
Movant,

v.

SUPERIOR COURT FOR THE STATE
OF CALIFORNIA, COUNTY OF
SANTA CLARA,
Respondent, and

COUNTY OF SANTA CLARA, and

OFFICE OF THE SANTA CLARA
COUNTY DISTRICT ATTORNEY,

Real Parties in Interest

Case No. CSW 59058

**Notice of Motion and Motion to Partially
Unseal Court Records (Rule of Court
2.551(h)(2))**

[UNREDACTED]
[PROVISIONALLY FILED UNDER SEAL]

Judge:
Department:
Date:
Time:

1 TO THE COURT, REAL PARTIES IN INTEREST AND THEIR ATTORNEYS OF RECORD:
2 PLEASE TAKE NOTICE that pursuant to Cal. R. of Ct. 2.551(h)(2), Movant Signal Messenger,
3 LLC (“Signal”) hereby moves to (1) partially modify a non-disclosure order, and (2) partially
4 unseal a search warrant issued and sealed by this Court on August 18, 2020, as well as the
5 recipient’s substantive response, with redactions to protect investigation-specific information and
6 personal privacy.

7 **INTRODUCTION**

8 Movant brings this motion to partially unseal a warrant served on it for customer
9 information. Movant has prepared a proposed redacted version of the warrant and Movant’s
10 response and has attached them as Exhibit A to this motion.

11 On August 18, 2020, this Court issued a search warrant authorizing an electronic search
12 under Penal Code § 1546.2. The Santa Clara Sheriff’s Department appears to have drafted and
13 submitted the applications for the warrant in question. The search warrant is numbered State of
14 California – County of Santa Clara, SW No. CSW 59058. The warrant sought from Signal a
15 variety of customer-related service records, including subscriber information and electronic
16 communication information related to a single telephone number.

17 On August 20, the warrant was served on Signal. On August 27, by email sent by legal
18 counsel, Signal provided a true and correct copy of all the records described in the search
19 warrant that were in its possession, custody, or control to an investigator of the Santa Clara
20 County District Attorney Office. “Signal Response” (attached as Exhibit A). The same day, the
21 investigator confirmed receipt of the response.

22 Judge Javier Alcala, who issued the warrant, also ordered, pursuant to Penal Code
23 § 1546.2(b), that the recipient service provider “delay notification of the existence of this
24 warrant, or the existence of the investigation, to the listed subscriber or any other person, for a
25 period of **90** days unless otherwise directed by the Court.” Warrant at 3.

26 Movant now seeks to partially unseal the warrant served on Signal in order to inform the
27 public that the company received and responded to legal process. Movant’s interest extends only
28

1 to notifying the public about the *fact* of the legal process and Movant’s response; it does not seek
2 to notify the target of the investigation while the ninety-day delayed notice provision, or any
3 extension, is in effect. Nor does Movant seek to unseal any information that would identify the
4 target, the underlying affidavit, or any other materials generated in connection with the warrant.

5 The only information in the three-page warrant that apparently could reveal information
6 that might interfere with the County’s investigation is the target telephone number. Movant
7 agrees that this information should remain sealed at this time, along with personally identifying
8 information related to a Signal employee and the State’s investigator.

9 Movant consulted with David R. Boyd, Deputy District Attorney in Santa Clara County,
10 who represented that the County opposes Movant’s requested relief.

11 ARGUMENT

12 I. Signal Is Committed To Greater Public Access To Surveillance Requests 13 Issued By Law Enforcement.

14 Signal depends on user trust in the privacy, security, and transparency of the service. As
15 Signal has publicly stated, the company designed its service to minimize the data it retains about
16 its users. *See* Signal, Government Requests, <https://signal.org/bigbrother>. Because of its end-to-
17 end encrypted design and other privacy features built into its software platform, the only
18 information the company could produce in response to this surveillance request was the date and
19 time the targeted user registered with Signal and the last date of the user’s connectivity to the
20 Signal service. Signal Response ¶ 5.

21 This is not the first time Signal has sought to partially unseal law-enforcement requests
22 for user information. In 2016, when Signal was served with a federal grand jury request for
23 customer information, upon producing the responsive information in its possession, it
24 immediately sought and—with the cooperation and assistance of federal prosecutors—obtained
25 the partial unsealing of the subpoena, the company’s response, and correspondence between
26 counsel for the company and federal prosecutors. *See* Signal, *Grand jury subpoena for Signal*
27 *user data, Eastern District of Virginia* (Oct. 4, 2016), <https://signal.org/bigbrother/eastern->

1 virginia-grand-jury. This is precisely the same process and outcome Signal seeks through this
2 motion.

3 **II. The California Penal Code Supports Unsealing Portions of This Warrant**
4 **and Modifying the Non-Disclosure Order.**

5 The public has a strong interest in understanding the scope of government surveillance
6 requests pursuant to judicial process. That interest is reflected in California law. First, court
7 records are presumed to be open. Cal. R. of Ct. 2.550(c) (attached as Exhibit B). A party or
8 member of the public may move to unseal a judicial record. Cal. R. of Ct. 2.551(h)(2) (attached
9 as Exhibit C). Records should not be sealed unless:

- 10 (1) There exists an overriding interest that overcomes the right of public access to the
11 record;
- 12 (2) the overriding interest supports sealing the record;
- 13 (3) a substantial probability exists that the overriding interest will be prejudiced if the
14 record is not sealed;
- 15 (4) the proposed sealing is narrowly tailored; and
- 16 (5) no less restrictive means exist to achieve the overriding interest.

17 *See* Cal. R. Ct. 2.550(d), 2.550(e)(1). Moreover, the California Supreme Court has made
18 clear that absent “a clear requirement otherwise, [courts] must interpret the sealed records rules
19 broadly to further the public’s right of access.” *Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*,
20 231 Cal. App. 4th 471, 495 (Cal. Ct. App. 2014).

21 Specifically with regard to search warrants, the 2015 California Electronic
22 Communications Privacy Act (“CalECPA”) requires California law-enforcement agencies to
23 provide the target of a warrant with information about the search and a copy of the warrant when
24 they execute it. Cal. Penal Code § 1546.2(a). If there is reason to believe that this notice may
25 have adverse results, the Court may delay notification to the target for renewable ninety-day
26 periods. *Id.* § 1546.2(b). This provision does not itself authorize sealing any materials.

27 Sealing is instead governed by Penal Code Section 1534(a), which expressly allows pre-
28 execution sealing but requires that executed and returned search warrants “shall be open to the

1 public as a judicial record” no later than ten days after issuance. Cal. Penal Code § 1534(a).
2 Courts interpreting Section 1534(a) have recognized only narrow exceptions to this presumption
3 of openness to protect material that is protected by a privilege. *See People v. Hobbs*, 7 Cal. 4th
4 948, 962 (Cal. 1994). “These codified privileges and decisional rules together comprise an
5 exception to the statutory requirement that the contents of a search warrant, including any
6 supporting affidavits setting forth the facts establishing probable cause for the search, become a
7 public record once the warrant is executed.” *Id.* There is no categorical exemption for search
8 warrants related to an ongoing investigation. *See PSC Geothermmal Svcs v. Superior Court*, 25
9 Cal. App. 4th 1697, 1713 (Cal. Ct. App. 1994) (recognizing that an ongoing investigation
10 exception would create an impermissibly broad exception to the Legislature’s guarantee that
11 such material will be available to the public after a warrant has been executed). California law
12 also requires eventual notice to an individual whose private information is the subject of a
13 government search. Cal. Penal Code § 1546.2(a).

14 In addition, the California Penal Code provision authorizing the issuance of a ninety-day
15 delayed-notice order supports limited modification of the order here. Indeed, Section 1546.2(b)
16 authorizes courts to issue non-disclosure orders in connection with search warrants for a user’s
17 digital information, but it critically limits such orders in two ways: first, the statute requires that
18 the court determine that any restriction on notice is necessary to prevent an “adverse result”; and
19 second, the statute requires that the court limit the time frame of delayed notification “the period
20 of time that the court finds there is reason to believe that the notification may have that adverse
21 result.” Both of these requirements make clear that to comply with the statute—and, additionally,
22 the First Amendment—any restriction on a provider’s speech in connection with search warrants
23 for a user’s digital information be narrowly drawn to prevent harm, such as interference with the
24 County’s investigation.¹

25 ¹ In barring Movant from engaging in speech before that speech occurs, the delayed-notice order
26 imposes a quintessential “prior restraint”—“the most serious and the least tolerable infringement
27 on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976); *see*
28 *Columbia Broadcasting Systems, Inc. v. U.S. Dist. Ct.*, 729 F.2d 1174, 1183 (9th Cir. 1984)
(describing the scrutiny imposed on prior restraints as “extraordinarily exacting”). To be justified

1 **III. No State Interest Overrides the Public Right of Access Here.**

2 Even in the unusual circumstances where statutorily privileged information may properly
3 be redacted from search warrant materials, the California Supreme Court has made clear that a
4 court should “take whatever further action may be necessary to ensure full public disclosure of
5 the remainder” of those records. *Hobbs*, 7 Cal. 4th 971 (Cal. 1994).

6 Here, while the Court ordered the sealing of the warrant for ninety days upon its issuance
7 under Penal Code § 1546.2(b), almost the entirety of the warrant recites general language
8 concerning the nature of the crime under investigation and the types of data requested and that
9 may be searched under the warrant. Disclosure of this information to the general public, on
10 Movant’s website, would meaningfully inform the public about the nature and instance of a
11 particular government surveillance request without jeopardizing any government interest.²

12 Instead of wholesale sealing, redaction is the appropriate and effective way to protect law
13 enforcement and privacy interests, while vindicating the public’s right of access as well. *See*

14 _____
15 under the First Amendment, first, a prior restraint must be necessary to further an urgent
16 governmental interest of the highest magnitude. *Landmark Commc’ns Inc. v. Virginia*, 435 U.S.
17 829, 845 (1978). Second, the government must also show that such harm is not simply possible,
18 or even probable, but is essentially imminent. *See id.* at 845 (requiring that “the degree of
19 imminence” be “extremely high” and substantiated through a “solidity of evidence”); *Domingo*
20 *v. New England Fish Co.*, 727 F.2d 1429, 1440 n.9 (9th Cir. 1984) (same); *Levine v. U.S. Dist.*
21 *Ct.*, 764 F.2d 590, 595 (9th Cir. 1985) (speech must pose “either a clear and present danger or a
22 serious and imminent threat”). Third, prior restraints must be “couched in the narrowest terms
23 that will accomplish the pin-pointed objective permitted by constitutional mandate and the
24 essential needs of the public order.” *Carroll v. President & Comm’rs of Princess Anne*, 393 U.S.
25 175, 183–84 (1968). And fourth, the government must also show that the prior restraint will
26 actually prevent the harm, and that it has no alternative to the prior restraint to prevent such
27 harm. *Nebraska Press*, 427 U.S. at 562, 565, 569–70.

28 The Court must interpret the authority to issue non-disclosure orders under Cal. Penal Code
§1546.2(b) consistently with these First Amendment standards. *See, e.g., Edward J. DeBartolo*
Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988) (explaining
the canon of constitutional avoidance, which states that where a “construction of a statute would
raise serious constitutional problems,” courts should “construe the statute to avoid such problems
unless such construction is plainly contrary to the intent of Congress”); *Peretz v. United States*,
501 U.S. 923, 930 (1991) (avoidance kicks in where one statutory interpretation “raise[s] a
substantial constitutional question”); *see also People v. McKee*, 47 Cal. 4th 1172, 1193 (Cal.
2010) (statutes must be construed to avoid difficult constitutional issues); *In re Smith*, 42 Cal. 4th
1251, 1269–70 (Cal. 2008) (construing civil-commitment statute to avoid difficult equal-
protection question).

² To be clear, Movant does not seek to notify the target of the investigation while the ninety-day
delayed notice provision, or any extension, is in effect.

1 *United States v. The Bus. of Custer Battlefield Museum And Store*, 658 F.3d 1188, 1195 n.5 (9th
2 Cir. 2011) (finding that competing concerns can typically be accommodated “by redacting
3 sensitive information rather than refusing to unseal the materials entirely”). As shown in the
4 redacted version of the warrant and Movant’s response provided in Exhibit A, Movant does not
5 seek to unseal details of any ongoing criminal investigation in connection with the returned
6 warrant. Nevertheless, California law requires the Court itself to ensure that any redactions are
7 narrowly tailored to serve the government interest in secrecy over such information. Here,
8 modifying the non-disclosure order and unsealing the warrant returned by Signal with redactions
9 to protect the phone number of the target of the County’s investigation and the personal privacy
10 of the County’s investigator and Signal’s Chief Operating Officer would not cause any harm or
11 jeopardize any government interest, including in the secrecy of any investigation that led to the
12 issuance of the warrant.

13 CONCLUSION

14 For these reasons, this Court should unseal in part the search warrant served on Movant
15 Signal.

16
17 October 22, 2020

Respectfully submitted,

18
19 /s/Jennifer Stisa Granick
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24 *Attorneys for Movant*
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Respondent, and

COUNTY OF SANTA CLARA, and

OFFICE OF THE SANTA CLARA
COUNTY DISTRICT ATTORNEY,

Real Parties in Interest

Case No. CSW 59058

Certificate of Service

I HEREBY CERTIFY that on Friday, October 22, 2020, a true and correct copy of the above document was served, with his consent, by email upon:

David R. Boyd
Deputy District Attorney
Writs, Appeals, and Habeas
Santa Clara County
Telephone: (408) 792-2968
Email: dboyd@dao.sccgov.org

Dated: October 22, 2020

/s/ Jennifer Stisa Granick
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EXHIBIT A

Redacted Warrant & Response

STATE OF CALIFORNIA - COUNTY OF SANTA CLARA, SW NO. _____

SEARCH WARRANT

(Electronic Communications Service Provider)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF SANTA CLARA:

Proof by affidavit and under penalty of perjury having been sworn by Investigator [REDACTED] that there is probable cause for believing that the property described below may be found at the location set forth below and is lawfully seizable pursuant to California Penal Code §1524 as indicated below by "x"(s) in that it:

- was stolen or embezzled
- was used as the means of committing a felony
- is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery
- tends to show that a felony has been committed or that a particular person has committed a felony
- tends to show that sexual exploitation of a child, in violation of California Penal Code §311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of §311.11, has occurred or is occurring
- there is a warrant to arrest the person
- is records or evidence, as specified in California Penal Code §1524.3 in the possession of a provider of electronic communication service or remote computing service, showing that
 - property was stolen or embezzled constituting a misdemeanor, or
 - that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or
 - in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing their discovery

YOU ARE THEREFORE COMMANDED TO SEARCH THE FOLLOWING SERVICE PROVIDER(S):

Signal Messenger, LLC

Attention: [REDACTED]

FOR THE FOLLOWING PROPERTY:

Service records described below for the following account: [REDACTED]

1. **Subscriber information** defined as the name, street address, telephone number, email address, or similar contact information provided by the subscriber to the provider to establish or maintain an account or communication channel, a subscriber or account number or identifier, the length of service, and the types of services used by the account holder.
2. **Electronic Communication Information** described below that was sent, received, created, deleted, modified or accessed between **March 1, 2019 and August 17, 2020**.
 - a) Billing records including method of payment.
 - b) Date of when the account was opened/registered, and any other phone numbers associated with the account.
 - c) All names, physical addresses, and email addresses associated with the account.
 - d) Outbound and Inbound call detail records including length of call, date, time, numbers dialed, or numbers received and any "key" or information that enables the investigator to interpret the data provided.
 - e) Stored communications including voice mail, video calls, email and text messages.
 - f) IP addresses along with dates and times for each login for login.
 - g) All dates and times of the user connectivity to the Signal service.
3. **Investigators shall examine** any records produced in response to #2, above for the following specific evidence:
 - a) Any data tending to identify a person who had custody or control of the account at the time any of the following items were sent, received, created, deleted, modified or accessed.
 - b) Communication data, including emails, text messages, instant messages, video calls, or voice mails and associated meta data referring to any of the following:
 1. Names of parties in the communication and their locations
 2. Any details or information about the homicide under investigation.
 3. Participation or involvement in the homicide under investigation.
 - c) Contact lists or other information tending to identify the parties to any communications identified under Item 3(a), above.
 - d) Images and video or audio clips and associated meta data showing any of the following:
 1. Personal identifying information such as names and locations.
 2. Any details or information about the homicide under investigation.
 3. Participation or involvement in the homicide under investigation.
 - e) Location data from March 1, 2019 to August 17, 2020

AND TO SEIZE IT/THEM IF FOUND and bring it/them forthwith before me, or this court, at the courthouse of this court.

Order for Delayed Notice

The Court finds that there is reason to believe that contemporaneous notification of the existence of this warrant may have an adverse result. Therefore,

IT IS HEREBY ORDERED, pursuant to California Penal Code §1546.2(b), that the Service Provider(s) receiving this warrant and the executing agency shall delay notification of the existence of this warrant, or the existence of the investigation, to the listed subscriber or to any other person, for a period of 90 days unless otherwise directed by the Court.

Order for Custodian's Declaration

IT IS HEREBY ORDERED, pursuant to Penal Code §1546.1(d)(3), that the Service Provider(s) receiving this warrant shall verify the authenticity of the records and information it produces by providing an affidavit that complies with the requirements set forth in California Evidence Code §1561.

Order for Productions of Records

IT IS HEREBY ORDERED that any records produced in response to this search warrant may be provided via email or digital storage media to:

Investigator [REDACTED]
Santa Clara County District Attorney Office
70 West Hedding ST, San Jose, Ca 95110
[REDACTED]@dao.sccgov.org [REDACTED]

Order for Timely Compliance with the Warrant

IT IS HEREBY ORDERED that the Service Provider(s) shall provide all records sought pursuant to this warrant within five (5) business days of having received this warrant.

Order for Content Unrelated to the Objective of the Warrant

IT IS HEREBY ORDERED, pursuant to California Penal Code §1546.1(d), that any electronic information obtained through the execution of this warrant that is unrelated to the objective of the warrant shall be sealed and shall not be subject to further review, use, or disclosure absent an order from the Court or to comply with discovery as required by California Penal Code §§1054.1 and 1054.7.

Order for Disposition of Evidence

IT IS HEREBY ORDERED that upon adjudication of the case(s) against all defendant(s) in this action, including the resolution of any and all appeals, or with the written concurrence of the Santa Clara County District Attorney's Office, the property be disposed of in accordance with the procedures set forth in California Penal Code §§1407 to 1413, without the necessity of a further Court Order issued pursuant to California Penal Code §1536.

Based on the incorporated Affidavit, I find probable cause for the issuance of this Search Warrant and do issue it on this date 8/18/2020, 2020 at 150PMpm.

NIGHT SEARCH APPROVED: [| Yes [| No
SEALING APPROVED: [x] Yes [| No

Javier Alcala

[Signature of Magistrate]
Judge of the Superior Court, County of Santa Clara

Judge Javier Alcala

EXHIBIT B

Cal. Rule of Court 2.550

Chapter 3. Sealed Records

Rule 2.550. Sealed records

Rule 2.551. Procedures for filing records under seal

Rule 2.550. Sealed records

(a) Application

- (1) Rules 2.550–2.551 apply to records sealed or proposed to be sealed by court order.
- (2) These rules do not apply to records that are required to be kept confidential by law.
- (3) These rules do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. However, the rules do apply to discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings.

(Subd (a) amended effective January 1, 2007.)

(b) Definitions

As used in this chapter:

- (1) “Record.” Unless the context indicates otherwise, “record” means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court, by electronic means or otherwise.
- (2) “Sealed.” A “sealed” record is a record that by court order is not open to inspection by the public.
- (3) “Lodged.” A “lodged” record is a record that is temporarily placed or deposited with the court, but not filed.

(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2007.)

(c) Court records presumed to be open

Unless confidentiality is required by law, court records are presumed to be open.

(d) Express factual findings required to seal records

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;

- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(Subd (d) amended effective January 1, 2004.)

(e) Content and scope of the order

- (1) An order sealing the record must:
 - (A) Specifically state the facts that support the findings; and
 - (B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.
- (2) Consistent with Code of Civil Procedure sections 639 and 645.1, if the records that a party is requesting be placed under seal are voluminous, the court may appoint a referee and fix and allocate the referee’s fees among the parties.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2004.)

Rule 2.550 amended effective January 1, 2016; adopted as rule 243.1 effective January 1, 2001; previously amended effective January 1, 2004; previously amended and renumbered as rule 2.550 effective January 1, 2007.

Advisory Committee Comment

This rule and rule 2.551 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Family Code, § 1818(b)), in forma pauperis applications (Cal. Rules of Court, rules 3.54 and 8.26), and search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948. The sealed records rules also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. (See *NBC Subsidiary, supra*, 20 Cal.4th at pp. 1208–1209, fn. 25.)

Rule 2.550(d)–(e) is derived from *NBC Subsidiary*. That decision contains the requirements that the court, before closing a hearing or sealing a transcript, must find an “overriding interest” that supports the closure or sealing, and must make certain express findings. (*Id.* at pp. 1217–1218.) The decision notes that the First Amendment right of access applies to records filed in both civil and criminal cases as a basis for adjudication. (*Id.* at pp. 1208–1209, fn. 25.) Thus, the *NBC Subsidiary* test applies to the sealing of records.

NBC Subsidiary provides examples of various interests that courts have acknowledged may constitute “overriding interests.” (See *id.* at p. 1222, fn. 46.) Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute “overriding interests.” The rules do not attempt to define what may constitute an “overriding interest,” but leave this to case law.

Rule 2.551. Procedures for filing records under seal

(a) Court approval required

A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties.

(Subd (a) amended effective January 1, 2007.)

(b) Motion or application to seal a record

(1) Motion or application required

A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing.

(2) Service of motion or application

A copy of the motion or application must be served on all parties that have appeared in the case. Unless the court orders otherwise, any party that already has access to the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version. Other parties must be served with only the public redacted version. If a party’s attorney but not the party has access to the record, only the party’s attorney may be served with the complete, unredacted version.

(3) Procedure for party not intending to file motion or application

(A) A party that files or intends to file with the court, for the purposes of adjudication or to use at trial, records produced in discovery that are subject to a confidentiality agreement or protective order, and does not intend to request to have the records sealed, must:

- (i) Lodge the unredacted records subject to the confidentiality agreement or protective order and any pleadings, memorandums, declarations, and other documents that disclose the contents of the records, in the manner stated in (d);
- (ii) File copies of the documents in (i) that are redacted so that they do not disclose the contents of the records that are subject to the confidentiality agreement or protective order; and

EXHIBIT C

Cal. Rule of Court 2.551

NBC Subsidiary provides examples of various interests that courts have acknowledged may constitute “overriding interests.” (See *id.* at p. 1222, fn. 46.) Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute “overriding interests.” The rules do not attempt to define what may constitute an “overriding interest,” but leave this to case law.

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A copy of the motion or application must be served on all parties that have appeared in the case. Unless the court orders otherwise, any party that already has access to the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version. Other parties must be served with only the public redacted version. If a party’s attorney but not the party has access to the record, only the party’s attorney may be served with the complete, unredacted version.

(3) Procedure for party not intending to file motion or application

(A) A party that files or intends to file with the court, for the purposes of adjudication or to use at trial, records produced in discovery that are subject to a confidentiality agreement or protective order, and does not intend to request to have the records sealed, must:

- (i) Lodge the unredacted records subject to the confidentiality agreement or protective order and any pleadings, memorandums, declarations, and other documents that disclose the contents of the records, in the manner stated in (d);
- (ii) File copies of the documents in (i) that are redacted so that they do not disclose the contents of the records that are subject to the confidentiality agreement or protective order; and

(iii) Give written notice to the party that produced the records that the records and the other documents lodged under (i) will be placed in the public court file unless that party files a timely motion or application to seal the records under this rule.

(B) If the party that produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly transfer all the documents in (A)(i) from the envelope, container, or secure electronic file to the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

(4) *Lodging of record pending determination of motion or application*

The party requesting that a record be filed under seal must lodge it with the court under (d) when the motion or application is made, unless good cause exists for not lodging it or the record has previously been lodged under (3)(A)(i). Pending the determination of the motion or application, the lodged record will be conditionally under seal.

(5) *Redacted and unredacted versions*

If necessary to prevent disclosure, any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete, unredacted version conditionally under seal. The cover of the redacted version must identify it as “Public—Redacts materials from conditionally sealed record.” The cover of the unredacted version must identify it as “May Not Be Examined Without Court Order—Contains material from conditionally sealed record.”

(6) *Return of lodged record*

If the court denies the motion or application to seal, the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2004, January 1, 2007, and January 1, 2016.)

(c) References to nonpublic material in public records

A record filed publicly in the court must not disclose material contained in a record that is sealed, conditionally under seal, or subject to a pending motion or an application to seal.

(Subd (c) amended effective January 1, 2004.)

(d) Procedure for lodging of records

- (1) A record that may be filed under seal must be transmitted to the court in a secure manner that preserves the confidentiality of the records to be lodged. If the record is transmitted in paper form, it must be put in an envelope or other appropriate container, sealed in the envelope or container, and lodged with the court.
- (2) The materials to be lodged under seal must be clearly identified as “CONDITIONALLY UNDER SEAL.” If the materials are transmitted in paper form, the envelope or container lodged with the court must be labeled “CONDITIONALLY UNDER SEAL.”
- (3) The party submitting the lodged record must affix to the electronic transmission, the envelope, or the container a cover sheet that:
 - (A) Contains all the information required on a caption page under rule 2.111; and
 - (B) States that the enclosed record is subject to a motion or an application to file the record under seal.
- (4) On receipt of a record lodged under this rule, the clerk must endorse the affixed cover sheet with the date of its receipt and must retain but not file the record unless the court orders it filed.

(Subd (d) amended effective January 1, 2016; previously amended effective January 1, 2004, and January 1, 2007.)

(e) Order

- (1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating “SEALED BY ORDER OF THE COURT ON (DATE),” and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court’s order. If the sealed record is in electronic form, the clerk must file the court’s order, maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.
- (2) The order must state whether—in addition to the sealed records—the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed.
- (3) The order must state whether any person other than the court is authorized to inspect the sealed record.
- (4) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in anything that is subsequently publicly filed.

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2004, January 1, 2007, and January 1, 2016.)

(f) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2004.)

(g) Custody of voluminous records

If the records to be placed under seal are voluminous and are in the possession of a public agency, the court may by written order direct the agency instead of the clerk to maintain custody of the original records in a secure fashion. If the records are requested by a reviewing court, the trial court must order the public agency to deliver the records to the clerk for transmission to the reviewing court under these rules.

(h) Motion, application, or petition to unseal records

- (1) A sealed record must not be unsealed except on order of the court.
- (2) A party or member of the public may move, apply, or petition, or the court on its own motion may move, to unseal a record. Notice of any motion, application, or petition to unseal must be filed and served on all parties in the case. The motion, application, or petition and any opposition, reply, and supporting documents must be filed in a public redacted version and a sealed complete version if necessary to comply with (c).
- (3) If the court proposes to order a record unsealed on its own motion, the court must give notice to the parties stating the reason for unsealing the record. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is provided and any other party may file a response within 5 days after the filing of an opposition.
- (4) In determining whether to unseal a record, the court must consider the matters addressed in rule 2.550(c)–(e).
- (5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both. If, in addition to the records in the envelope, container, or secure electronic file, the court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

(Subd (h) amended effective January 1, 2016; previously amended effective January 1, 2004, and January 1, 2007.)

Chapter 4. Records in False Claims Act Cases

Rule 2.570. Filing False Claims Act records under seal

Rule 2.571. Procedures for filing records under seal in a False Claims Act case

Rule 2.572. Ex parte application for an extension of time

Rule 2.573. Unsealing of records and management of False Claims Act cases

Rule 2.570. Filing False Claims Act records under seal

(a) Application

Rules 2.570–2.573 apply to records initially filed under seal pursuant to the False Claims Act, Government Code section 12650 et seq. As to these records, rules 2.550–2.551 on sealed records do not apply.

(Subd (a) amended effective January 1, 2007.)

(b) Definitions

As used in this chapter, unless the context or subject matter otherwise requires:

- (1) “Attorney General” means the Attorney General of the State of California.
- (2) “Prosecuting authority” means the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of or in the name of a particular political subdivision.
- (3) “*Qui tam* plaintiff” means a person who files a complaint under the False Claims Act.
- (4) The definitions in Government Code section 12650 apply to the rules in this chapter.

(Subd (b) amended effective January 1, 2007.)

(c) Confidentiality of records filed under the False Claims Act

Records of actions filed by a *qui tam* plaintiff must initially be filed as confidential and under seal as required by Government Code section 12652(c). Until the seal is lifted, the records in the action must remain under seal, except to the extent otherwise provided in this rule.

(d) Persons permitted access to sealed records in a False Claims Act case

- (1) *Public access prohibited*

As long as the records in a False Claims Act case are under seal, public access to the