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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE GRAND JURY SUBPOENA Dated
June 8, 2006, Joshua Wolf,

No. CR 06-90064 MISC WHA

Subpoenaed Party.

**ORDER RE SEALING OF
DOCUMENTS**

_____ /

The request by subpoenaed party Joshua Wolf that “all filings in these proceedings” be unsealed is **DENIED**, because some documents must be kept under seal pursuant to Federal Rule of Criminal Procedure 6(e)(5), which requires that “[r]ecords, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.” It should be noted, however, that any party wishing to file something under seal in the instant case must get a court order to do so, pursuant to Criminal Local Rule 1-2 and Civil Local Rule 79-5.

The witness objects to the protective order imposed on his counsel, restricting their distribution and use of the transcript of June 15, 2006, of proceedings before Grand Jury 06-1. A review of the transcript shows that much of it is taken up by the very refusals to answer questions and to produce subpoenaed materials that are the subject of the public contempt hearings in the instant matter. *See In re Battaglia*, 653 F.2d 419, 422 (9th Cir. 1981) (setting forth elements of *prima facie* showing of civil contempt). All of these refusals to answer will thus become part of the public record. It therefore makes no sense to withhold the entire transcript from the public. The relevant transcript of the June 15 grand-jury proceedings, filed

1 at Exhibit E, is **HEREBY UNSEALED** from page 12, line 13 through the end, which is the portion
2 that took place after the Court ordered Mr. Wolf to comply with the subpoena. Exhibit 1 to the
3 transcript is also **UNSEALED**, because the relevance of its contents to the grand-jury
4 investigation is an element of the *prima facie* showing the government must make before the
5 witness can be held in civil contempt. *Ibid.*


6 The government sought to file two documents under seal: the request to require the
7 witness to show cause why he should not be held in contempt, and a declaration by Jeffrey
8 Finigan, dated July 7, 2006, in support of that request, including several exhibits. The
9 government later stated, however, that the requests to file these documents under seal would be
10 “moot” if the Court decided to unseal the transcript (United States’ Resp. to Court’s Order Re
11 Filing Under Seal 2). Only a portion of the transcript is being unsealed. This order therefore
12 reviews whether the two documents must be filed under seal.

13 The government contended that six lines in the request for an order to show cause
14 contain secret grand jury material (*ibid.*). Only one sentence is arguably secret. It is the
15 sentence that begins at page 3, line 2 and continues to page 3, line 4. The rest of the passage
16 contains material that is available publicly in other court documents. In the declaration, the
17 government contends that two paragraphs, eight and ten, contain secret material that should not
18 be revealed. Only paragraph eight remains secret, in light of the partial disclosure of the grand-
19 jury transcript. The full documents will be filed under seal.

20 The government is **ORDERED TO E-FILE PUBLICLY A REDACTED COPY OF THE**
21 **TRANSCRIPT OF JUNE 15, EXHIBIT 1 THERETO AND THE OTHER TWO FILINGS DESCRIBED IN**
22 **THE IMMEDIATELY PRECEDING PARAGRAPH, REDACTED IN ACCORDANCE WITH THIS**
23 **ORDER, BY 5 P.M., MONDAY, JULY 24, 2006.**

24
25 **IT IS SO ORDERED.**

26
27 Dated: July 21, 2006

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE