1 James R. Wheaton, State Bar No. 115230 David A. Greene, State Bar No. 160107 ENDORSED Geoffrey W. King SBN No. 267438 FIRST AMENDMENT PROJECT FILED ALAMEDA COUNTY 1736 Franklin Street, 9th Floor Oakland, CA 94612 APR 16 2010 Telephone: (510) 208-7744 Facsimile: (510) 208-4562 CLERK OF THE SUPERIOR COURT 5 Attorneys for Movant DAVID MORSE 6 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 IN AND FOR THE COUNTY OF ALAMEDA 9 10 IN RE SEARCH WARRANT ISSUED DECLARATION OF J.T. JOHNSON IN 11 **DECEMBER 12, 2009** SUPPORT OF MOTION TO QUASH SEARCH WARRANT AND RETURN 12 PROPERTY 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Declaration of J.T. Johnson In Support of Motion to Quash Warrant and Return Property

DECLARATION OF J.T. JOHNSON

I, J.T. JOHNSON, declare under penalty of perjury that, unless otherwise indicated, the following is true and correct of my own personal knowledge, and would testify hereto if called at trial:

1. I am professor emeritus of journalism at San Francisco State University and co-founder of the Institute for Analytic Journalism. I hold a Bachelor's degree in Journalism from Trinity University and a Master's degree in American Studies from the University of Kansas, where I was also a Ph.D. candidate in American Studies. I later earned a Doctoral Equivalency from San Francisco State University. My graduate work focused on the relationships between science and technology and society.

2. I have worked in publishing, journalism and higher education for 30 years. Most recently, I was a visiting professor of analytic journalism at Boston University for two years. While on leave from San Francisco State in the late 1990s, I served as deputy editor of the Saint Louis Post-Dispatch. Before joining the faculty at San Francisco State in 1976, I was an editor at Scientific American/W. H. Freeman and Company in San Francisco. Since starting as a freelance reporter at the Topeka Capital-Journal in 1969, I have contributed to such diverse news outlets as The New York Times, United Press International, Time-Life, Popular Science, OMNI, Discover, Fortune, Smithsonian, Mother Jones, Air Line Pilot, Popular Mechanics, Outside, Endless Vacation, InformationWEEK, MacWEEK, Air & Space, the Banker's Magazine (London), the Chicago Tribune, the Washington Star and the Detroit Free Press.

3. I am a member of the Society of Professional Journalists, Investigative Reporters and Editors, the National Association of Science Writers, the National Association of Hispanic Journalists and the Online News Association.

4. My current research focuses on the methodologies emerging from Complexity Studies, Geographic Information Systems, forensic accounting and performance measurement and their application to understanding change in the media and related issues of privacy.

5. I have been deeply involved in studying and using the tools of the digital revolution since

Johnson

2

3

1

6

10

. 9

11 12

13 14

15

16

17

18 19

20

21 22

23 24

> 25 26

27

28

my days as a graduate student in the early 1970s, and have continued to be so involved during my academic and professional journalist career. I have been closely following the evolution of a variety of media forms, formats and digital applications broadly related to communications across and within various aspects of not only American culture, but globally. As a professor who taught mass communications and journalism survey courses for nearly 30 years I have been very much aware of the evolution of independent media in general. Because I lived and worked in the San Francisco Bay Area for much of that time, I was, of course, familiar with Indybay and the independent media movement-globally.

- It is clear that we are in the early decades of the third revolution in humanity's history of communications. This evolution (as is true of those gone before) is marked by the emergence of new forms, new methods of fact-gathering, analysis and distribution of what is considered news. "Citizen journalism" and "online journalism" are little different in the history of communication from the development of scrolls, codices, illuminated manuscripts, newsletters, telegraph messages, radio broadcasts, and television documentaries. The major, long-term trend of this evolution is that for millennia we have seen a shift in power, a shift away from narrow, rigid institutional sources and toward individuals who have the opportunity—on their own—to access data, analyze that data, and report the results of that analysis to audiences of varying size. Citizen journalism and online journalism are just some of the latest examples of that evolution.
- 7. While Indybay is illustrative of this shift toward democratized information dissemination, it also easily meets the definition of a periodical publication, a wire service, and press association as those terms have historically been construed.
- Indybay is a periodical publication, its periodicity being 24 hours a day seven days a week, with articles published as they are generated.
- A wire service is an organization or institution created to facilitate the distribution of news and data in all their possible forms and formats to a variety of institutional and individual customers or subscribers. Subscribers may or may not be required or expected to pay a fee for this content. Indybay is a wire service, in that it is a channel to distribute news to a variety of citizens, institutions, and agencies who choose to accept that news.

1	
2)
3)
4	
5	
6	,
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	i
23	
24	ĺ
25	
26	-
	3

27

28

10.	A press association can be synonymous with a wire service. It can also take on
the de	finition of a collective trade association with the goal of facilitating collaborative efforts in
the m	arketing, publicity, training and tracking and commenting on legal issues relevant to all
memb	ers of the association. Indybay is a press association in that it serves to institutionalize the
distrit	oution of news and data supplied by its members and contributors.

- 11. The artifacts and technologies of the "digital revolution" do not alter the underlying nature of news outlets like *Indybay*. When viewed in the context of the medium's content, there is little difference between the stories reported by *The London Gazette* (1666) or *Publick Occurrences Both Forreign and Domestick* (Boston 1690) and the content of *Indybay*. That is to say, the presentation and delivery technologies are, in this case, of no real importance, especially when defining the purpose and function of media institution.
- 12. To say that *Indybay* is a periodical publication, wire service and press association is to say that it is a classic example of an evolving media entity, one that integrates the form and format of past institutions that were once defined somewhat differently given the available technology, but the function of which is the same. *Indybay* meets all of my definitions of an institution of journalism practice and distribution.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and executed this 4th day of April, 2010 in Santa Fe, New Mexico.

By:

J.T/Johnson