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6 Attorneys for Proposed Intervenor
7 Reno Newspapers, Inc., a Nevada
8 Corporation doing business as the
9 Reno Gazette-Journal

10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF NEVADA

11 ETREPPID TECHNOLOGIES, INC. a
12 California corporation,
13 Plaintiff,

Case No. 3:06-CV-00145-PMP-VPC;
and
3:06-CV-00056-PMP-VPC

14 vs.

15 DENNIS MONTGOMERY, an individual,
16 MONTGOMERY FAMILY TRUST, a
17 California Trust, and DOES 1 THROUGH
18 20,

MOTION TO INTERVENE

18 Defendant.

19 DENNIS MONTGOMERY, an individual;
20 and MONTGOMERY FAMILY TRUST, a
21 California Trust,

21 Plaintiffs,

22 vs.

23 eTREPPID TECHNOLOGIES, INC. a
24 Nevada LLC; WARREN TREPP, an
25 individual; DEPARTMENT OF DEFENSE of
26 the UNITED STATES OF AMERICA and
27 DOES 1 through 10,

27 Defendants.

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Proposed Intervenor Reno Newspapers, Inc., a Nevada corporation doing business as the Reno Gazette-Journal, ("RGJ") respectfully moves the Court for an order granting it leave to intervene in this case for the limited purpose of filing a motion to require open proceedings and unseal records. Attached hereto as Exhibit 1 is a copy of the RGJ's proffered motion.

This motion for intervention is made on the ground that the RGJ has a right under the First Amendment to the United States Constitution to access the courtroom proceedings and documentary records in this matter. Moreover, the RGJ has a corresponding right to intervene into this matter for the limited purpose of seeking to protect that right of access by moving the Court for an order requiring open proceedings and unsealing records.

This motion is based upon the memorandum of points and authorities submitted herewith, and upon all other papers, pleadings and documents on file herein.

DATED this 13th day of March, 2007.

BURTON, BARTLETT & GLOGOVAC

By: 
SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226
DAVID S. McELROY, ESQ.
Nevada Bar No. 000334

Attorneys for Proposed Intervenor
Reno Newspapers, Inc., a Nevada
Corporation doing business as the
Reno Gazette-Journal

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background.

These two cases involve competing claims of ownership and copyright in certain intellectual property. Both were originally filed in January, 2006. On their face, the cases do not appear to involve matters that are particularly newsworthy or affecting the public interest. However, public filings in these cases on behalf of Mr. Montgomery, in particular the "Motion for Disclosures" filed on March 5, 2007, contain serious allegations of unlawful collusion between Mr. Tripp, the Nevada United States Attorney's office, the FBI, and Nevada Governor James Gibbons.

In brief, Mr. Montgomery alleges that Mr. Tripp has a close personal relationship with Governor Gibbons, and used this relationship to improperly influence the Nevada United States Attorney and the FBI into conducting an illegal search and seizure of certain property located at 12720 Buckthorn Lane, Reno, Nevada. The details concerning this search and seizure are under seal in the case of In the Matter of the Search of 12720 Buckthorn Lane, 3:06-CV-0263-PMP-VPC (the "Sealed Case").

The Motion for Disclosures also references a 33 page Order issued on November 28, 2006 by Judge Valerie Cook in the Sealed Case which found the search and seizures unconstitutional. The serious allegations contained in the Motion for Disclosures obviously affect the public interest, as they involve claims of unlawful conduct and impropriety by public officials.

Proposed Intervenor Reno Newspapers, Inc. is a Nevada corporation doing business as the Reno Gazette-Journal ("RGJ"). The RGJ is a newspaper published daily in Reno, Nevada. In that capacity, the RGJ has a right under the First Amendment to the United States Constitution to access the courtroom proceedings and documentary records

1 in this matter, including but not limited to all filings in these cases and full access to the
2 courtroom proceedings herein. The RGJ will also be seeking to intervene in the Sealed
3 Case for the purpose of making the records and proceedings therein public as well.

4 While the RGJ is not currently a party to this proceeding, it has a right under the
5 governing common law to intervene into this matter for the limited purpose of filing a motion
6 for open proceedings and to unseal records. (In this regard, as noted above, a copy of the
7 RGJ's proffered motion is attached hereto as Exhibit 1.)

8
9 Based upon the foregoing, the RGJ respectfully requests the Court to enter an order
10 allowing it to intervene in this matter for the purpose of filing its motion for open
11 proceedings and to unseal records.

12 **II. Discussion: RGJ Has Standing, And A Corresponding Common Law Right To**
13 **Intervene Into This Matter To Require Open Proceedings and Unseal Records.**

14 The United States Supreme Court has held that the First Amendment to the United
15 States Constitution guarantees the press and the public the right to attend trials and pre-
16 trial proceedings. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580 (1980); Globe
17 Newspaper Co. v. Superior Court, 457 U.S. 596, 604-05 (1982); Press-Enterprise Co. v.
18 Superior Court, 464 U.S. 501, 505-09 (1984); Press-Enterprise Co. v. Superior Court, 478
19 U.S. 1, 10 (1986). This guarantee applies to judicial records and documents, and not just
20 to the courtroom proceedings themselves. Associated Press v. U.S. Dist. Court for Cent.
21 Dist. of California, 705 F.2d 1143, 1145 (9th Cir. 1983)(stating that "[t]here is no reason to
22 distinguish between pretrial proceedings and the documents filed in regard to them.").

23
24 The right of access to judicial proceedings applies to civil matters as well as to
25 criminal matters. See, e.g., Publicker Indus. v. Cohen, 733 F.2d 1059 (3d Cir. 1984)
26 (upholding First Amendment and common law right of access in civil proceedings); In re
27 Continental Illinois Sec. Litig., 732 F.2d 1302, 1308 (7th Cir. 1984) ("...the policy reasons
28

1 for granting public access to criminal proceedings apply to civil cases as well."); Grove
2 Fresh Distribs., Inc. v. Everfresh Juice Co., 24 F.3d 893, 897 (7th Cir. 1994) (recognizing
3 the media's First Amendment and common law rights to obtain disclosure in civil cases
4 through intervention); Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1165 (6th Cir.
5 1983) (recognizing common law and First Amendment access rights in civil judicial
6 proceedings, and vacating the trial court's order sealing documents); Doe v. Santa Fe
7 Indep. School Dist., 933 F. Supp. 647, 648-50 (S.D. Tex. 1996) (rights of access in civil
8 matters are grounded in the First Amendment as well as in the common law).
9

10 Because of the importance of public access to proceedings and documents, the
11 United States Supreme Court has held that "representatives of the press and public must
12 be given an opportunity to be heard on the question of their exclusion." Globe Newspapers
13 Co. v. Superior Court, 457 U.S. 596, 609 n.25 (1982)(emphasis added). In accordance
14 with this pronouncement, courts permit the media to appear in criminal and civil cases in
15 which they are not parties for the purpose of challenging requests or orders to seal judicial
16 records. See San Jose Mercury News v. U.S. District Court, 187 F.3d 1096, 1101. More
17 specifically, courts grant the media, as a surrogates for the public, "an opportunity to
18 intervene and protect [that] interest." U.S. v. Brooklier, 685 F.2d 1162, 1168 (9th Cir. 1982).
19

20 In this regard, the Nevada Supreme Court has expressly recognized a media
21 representative's right to intervene in a proceeding for the limited purpose of challenging a
22 closure order which would restrict the media's access to the proceeding. Azbill v. Fisher,
23 84 Nev. 414, 417, 442 P.2d 916, 917 (968). In Azbill, a media representative petitioned the
24 court "to participate as an intervenor in [the] proceedings," asserting that an order allowing
25 the defendant to exclude the press from the courtroom during the defendant's preliminary
26 hearing was "an infringement upon the constitutional doctrine of freedom of the press." Id.
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1 The Nevada Supreme Court held that the media representative had the right to intervene,
2 and that the media representative's standing to challenge the closure order was "in the
3 public interest." Id.

4 Other courts have also expressly held that media representatives have standing to
5 intervene into criminal matters to protect the public's right of access to courtroom
6 proceedings and documents. Thus, for instance, in State v. Tallman, the Vermont
7 Supreme Court held that "direct intervention in a trial court proceeding is an appropriate
8 legal vehicle for ensuring that the news media's voice is heard in a timely manner." 537
9 A.2d 422, 424 (Vt. 1987). That court additionally held that the assertion by the press of
10 "the public's First Amendment right of access will assure that the public's interest is
11 represented." Id. See also In re Associated Press, 162 F.3d 503, 507 (7th Cir.
12 1998)(noting that the most appropriate mechanism to protect the public and media's
13 constitutional right to access judicial proceedings and documents is to allow intervention by
14 the media for that limited purpose); U.S. v. Kushner, 349 F.Supp.2d 892, 896 (D.N.J.
15 2005)(stating that the media has standing to intervene because the media and public have
16 a right of access to judicial records that they cannot be deprived of without notice and an
17 opportunity to be heard).

18
19
20 Based upon the foregoing authorities, the RGJ has standing to require that the
21 proceedings in this case are and remain public, and that all papers and pleadings filed
22 herein are unsealed. Moreover, especially considering the serious allegations by Mr.
23 Montgomery as to misconduct by public officials, there is no question that the RGJ has a
24 corresponding common law right to intervene into this matter for the limited purpose of
25 filing a motion by which such relief is sought.
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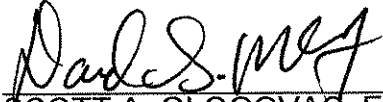
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III. Conclusion.

Based upon the foregoing, the RGJ respectfully requests the Court to enter an order granting it leave to intervene into this matter for the limited purpose of filing its proposed motion to require open proceedings and unseal records.

DATED this 13th day of March, 2007.

BURTON, BARTLETT & GLOGOVAC

By: 
SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226
DAVID S. McELROY, ESQ.
Nevada Bar No. 000334

Attorneys for Proposed Intervenor
Reno Newspapers, Inc., a Nevada
Corporation doing business as the
Reno Gazette-Journal

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the law offices of Burton, Bartlett & Glogovac, 50 W. Liberty St., Suite 700, Reno, NV 89501, and that on the 13th day of March, 2007, I served the foregoing document(s) described as follows:

MOTION TO INTERVENE

On the party(s) set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Facsimile (FAX).
- Federal Express or other overnight delivery.

addressed as follows:

Jerry M. Snyder, Esq.
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Jonathan D. Butler, Esq.
Pillsbury Winthrop Shaw Pittman, L.L.P.
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Ronald Rachow, Esq.
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Michael J. Flynn, Esq.
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6125 El Tordo
Rancho Santa Fe, CA 92067

Dated this 13th day of March, 2007.

Roni L. Shaffer
Roni L. Shaffer

Exhibit 1

1 SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226
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**MOTION TO REQUIRE OPEN
PROCEEDINGS AND TO UNSEAL
RECORDS**

18 Defendants.

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Intervenor Reno Newspapers, Inc., a Nevada corporation doing business as the Reno Gazette-Journal, ("RGJ") respectfully moves the Court for an order requiring the proceedings in these cases to be and remain open, and to unseal all records filed herein.

This motion is made on the ground that pursuant to the First Amendment to the United States Constitution, the RGJ has a right to full access to the courtroom proceedings and documentary records in this matter.

This motion is based upon the memorandum of points and authorities submitted herewith, and upon all other papers, pleadings and documents on file herein.

DATED this _____ day of March, 2007.

BURTON, BARTLETT & GLOGOVAC

By: SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226
DAVID S. McELROY, ESQ.
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I. Background.

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4 intellectual property. Both were originally filed in January, 2006. On their face, the cases do
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6 interest. However, public filings in these cases on behalf of Mr. Montgomery, in particular
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8 collusion between Mr. Tripp, the Nevada United States Attorney's office, the FBI, and
9 Nevada Governor James Gibbons.
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12 with Governor Gibbons, and used this relationship to improperly influence the Nevada
13 United States Attorney and the FBI into conducting an illegal search and seizure of certain
14 property located at 12720 Buckthorn Lane, Reno, Nevada. The details concerning this
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19 28, 2006 by Judge Valerie Cook in the Sealed Case which found the search and seizures
20 unconstitutional. The serious allegations contained in the Motion for Disclosures obviously
21 affect the public interest, as they involve claims of unlawful conduct and impropriety by
22 public officials.
23

24 Intervenor Reno Newspapers, Inc. is a Nevada corporation doing business as the
25 Reno Gazette-Journal ("RGJ"). The RGJ is a newspaper published daily in Reno, Nevada.
26 In that capacity, the RGJ moved for and obtained leave from the Court to file this. The RGJ
27 will also be seeking to intervene in the Sealed Case for the purpose of making the records
28 and proceedings therein public as well.

1 As discussed in detail below, the RGJ has a constitutional right under the First
2 Amendment to the United States Constitution to access the proceedings and records in
3 this matter. The RGJ thus respectfully requests the Court to enter an order requiring all
4 proceeding in this matter to remain public, and to unseal all papers and pleading filed
5 herein.

6
7 **II. Discussion.**

8 The United States Supreme Court has held that the First Amendment to the United
9 States Constitution guarantees the press and the public the right to attend trials and pre-
10 trial proceedings. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580 (1980); Globe
11 Newspaper Co. v. Superior Court, 457 U.S. 596, 604-05 (1982); Press-Enterprise Co. v.
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26 1983) (recognizing common law and First Amendment access rights in civil judicial
27 proceedings, and vacating the trial court's order sealing documents); Doe v. Santa Fe
28

1 Indep. School Dist., 933 F. Supp. 647, 648-50 (S.D. Tex. 1996) (rights of access in civil
2 matters are grounded in the First Amendment as well as in the common law).

3 This First Amendment guarantee is based not only on historical precedent, but also
4 on the theory that the public's right to access all aspects of such proceedings is necessary
5 for the proper functioning of the judicial system. Press-Enterprise Co. v. Superior Court,
6 464 U.S. 501, 509-510 (1984). As such, there is a strong presumption in favor of
7 openness. In Globe Newspaper Co. v. Superior Court, the Supreme Court stated the
8 where "the State attempts to deny the right of access in order to inhibit the disclosure of
9 sensitive information, it must be shown that the denial is necessitated by a compelling
10 governmental interest, and is narrowly tailored to serve that interest." 457 U.S. 596, 606-
11 607 (1982). See also, Press-Enterprise v. Superior Court (denying the public and media
12 access must be rare and only for cause shown that outweighs the value of openness) 464
13 U.S. 501, 509.

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16 "The presumption of openness may be overcome only by an overriding interest
17 based on findings that closure is essential to preserve higher values and is narrowly
18 tailored to serve that interest." Press-Enterprise 464 U.S. at 510. Any such overriding
19 interest must "be articulated along with findings specific enough that a reviewing court can
20 determine whether the closure order was properly entered." Id.

21
22 In support of this policy of openness, the court stated that "[t]he value of openness
23 lies in the fact that people . . . can have confidence that standards of fairness are being
24 observed . . . that established procedures are being followed and that deviations will
25 become known." Id. at 508.

26 The Supreme Court has additionally observed that "[a] trial is a public event. What
27 transpires in the court room is public property. . . . There is no special perquisite of the
28 judiciary which enables it, as distinguished from other institutions of democratic

1 government, to suppress, edit, or censor events which transpire in proceedings before it.”
2 Craig v. Harney, 331 U.S. 367, 374 (1947).

3 Based upon the foregoing authorities, a strong constitutional presumption of
4 openness exists with respect to the courtroom proceedings and documentary records in
5 these cases. Absent express, specific findings by the Court in these matters that an order
6 sealing any of the records herein “is essential to preserve higher values” and is “narrowly
7 tailored” to serve those values, the RGJ, and all other members of the public, must be
8 granted access the records in these cases.
9

10 Considering the serious allegations by Mr. Montgomery as to misconduct and
11 improper influence of public officials, these cases are clearly affected with the public
12 interest and the RGJ has a constitutional right of access to all proceedings and documents
13 herein.
14

15 **III. Conclusion.**

16 Based upon the foregoing, the RGJ respectfully requests the Court to enter an order
17 requiring open proceedings and unsealing all records in these cases.

18 DATED this _____ day of March, 2007.

19 BURTON, BARTLETT & GLOGOVAC

20
21 By:

22 SCOTT A. GLOGOVAC, ESQ.
23 Nevada Bar No. 000226
24 DAVID S. McELROY, ESQ.
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Pursuant to FRCP 5(b), I certify that I am an employee of the law offices of Burton, Bartlett & Glogovac, 50 W. Liberty St., Suite 700, Reno, NV 89501, and that on the _____ day of March, 2007, I served the foregoing document(s) described as follows:

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