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CONNIE MAZZEI, CLERK OF THE SUPERIOR COURT
BY Sally Lopez DEPUTY

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF MONTEREY**

9
10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 v.

14 JOHN FRANKLIN KENNEY,

15 Defendant.

Case No. CRSS070780A

MOTION FOR CHANGE OF VENUE AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

16
17 **INTRODUCTION**

18 Mr. Kenney's case is set to begin jury trial on May 6, 2007. It is clear that the
19 details of Mr. Kenney's case have been the source of substantial media coverage,
20 including television broadcasts following most of his court appearances, extensive
21 newspaper and internet news coverage and editorials. This coverage has been so
22 extensive and pervasive that there is a reasonable likelihood that Mr. Kenney will not
23 receive a fair trial in the County of Monterey. Mr. Kenney therefore makes this motion for
24 a change of venue for his jury trial.
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ARGUMENT

I. THE SIXTH AND FOURTEENTH AMENDMENTS REQUIRE A CHANGE OF VENUE WHEN THERE IS A REASONABLE LIKELIHOOD THAT PREJUDICIAL NEWS PRIOR TO TRIAL WILL PREVENT A FAIR TRIAL

A provision of the Bill of Rights that is "fundamental and essential to a fair trial" is made obligatory upon the States by the Fourteenth Amendment. (*Gideon v. Wainwright* (1963) 372 U.S. 335, 342.) The Sixth Amendment right to jury trial, together with many of the rights guaranteed by the first eight Amendments to the U.S. Constitution "have been held to be protected against state action by the Due Process Clause of the Fourteenth Amendment." (*Duncan v. Louisiana* (1968) 391 U.S. 145, 148-154.)

As noted in *Sheppard v. Maxwell* (1966) 384 U.S. 333:

"[U]nfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused."

(*Id.* at 362.)

In *Sheppard*, the U.S. Supreme Court held that "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity." (*Ibid.*)

In *Groppi v. Wisconsin* (1971) 400 U.S. 505, however, the U.S. Supreme Court recognized that ". . . continuances, particularly if they are repeated, work against the important values implicit in the constitutional guarantee of a speedy trial." (*Id.* at 510.)

