

1 **SMITHDEHN LLP**

2 Jeffery Holmes, Esq. (SBN 100891)

3 Email: jholmes@smithdehn.com

4 654 San Juan Avenue

5 Venice Beach

6 Los Angeles, California 90291

7 Phone: (310) 396-9045

8 Fax: (970) 497-4922

9 Attorneys for Non-Party Movants

10 **DANIEL REED and AMOS PICTURES**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES – WESTERN DISTRICT**

13 WADE ROBSON, an individual,

14 Plaintiff,

15 vs.

16 MJJ PRODUCTIONS, INC., a California
17 corporation; MJJ VENTURES, INC., a
18 California corporation; and DOES 4-50,
19 inclusive,

20 Defendants.

Case No. BC 508502

[Related to Case No. BP117321 and Case No.
BC545264]

Assigned to Hon. Mark A. Young, Dept. M

**NOTICE OF MOTION; NON-PARTY
MOVANTS DANIEL REED AND AMOS
PICTURES' MOTION TO QUASH TWO
SUBPOENAS DUCES TECUM;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT; MEET AND
CONFER DECLARATION OF JEFFERY
HOLMES; DECLARATIONS OF LOUISA
COMPTON AND DANIEL REED**

Reservation ID No. 791197722956

Date: April 9, 2021

Time: 8:30 a.m.

Location: M

Judge: Mark A. Young

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23
24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 PLEASE TAKE NOTICE THAT on November 13, 2020 at 8:30 a.m., non-parties Daniel Reed
26 (“Reed”), on behalf of himself and Amos Pictures (“Amos”), the company that Reed founded and of
27 which he is the director, will and hereby do move this court to quash the two Civil Subpoenas Duces
28

1 Tecum dated September 21, 2020 (“Subpoenas”), served on them in this case by MJJ Productions,
2 Inc., and MJJ Ventures, Inc. (Collectively, “MJJ”) on the following grounds:

3 1) The Court’s lack of subpoena jurisdiction over UK residents and MJJ’s failure to serve
4 the Subpoenas through the Hague Convention;

5 2) Non-party journalist Reed and, through him, Amos, both working for the News and
6 Current Affairs Department of Channel 4 Television Corporation, a major UK public service
7 broadcaster owned by the UK Government, must be protected by the California media shield law, both
8 in Article I, Section 2(b) of the California Constitution and in California Evidence Code Section 1070;
9 and
10

11 3) Non-party journalist Reed and, through him, Amos, must be protected by the reporter’s
12 privilege under the First Amendment of the United States Constitution and California Constitution.
13

14
15 This motion is made pursuant to California Code of Civil Procedure 1987.1. It is based on this
16 notice, the attached memorandum of points and authorities, the Declaration of Louisa Compton, Head
17 of News and Current Affairs at Channel 4 Television Corporation, the Declaration of Reed, the
18 Declaration of movants’ counsel Jeffery Holmes, and the complete files on record in this matter, and
19 such further argument and material as the Court may consider at the hearing of this matter.
20

21 Dated: October 13, 2020

22 **SMITHDEHN LLP**

23
24 By: /s/ Jeffery Holmes
25 JEFFERY HOLMES, ESQ
26 *Attorneys for non-party movants*
27 *Daniel Reed and Amos Pictures*
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MEMORANDUM OF POINTS AND AUTHORITIES

Non-party journalists Daniel Reed (“Reed”) and Amos Pictures (“Amos) move to quash the Subpoenas at issue, or, in the alternative, for a protective order based on improper service upon foreign nationals, the “absolute immunity” in California's media shield law (Evid.Code, § 1070; Cal. Const., art. I, § 2, subd. (b)); and the qualified privilege arising from the U.S. Constitution and the California constitution (Cal. Const., art. I, § 1).

I. INTRODUCTION

The defendants in this case (the “MJJ Companies”) served UK journalists Reed and Amos with Subpoenas, demanding that they appear for depositions and produce all raw, unpublished footage, plus a trove of other confidential documents, all in relation to Reed’s 2019 Primetime Emmy Award winning documentary film, “Leaving Neverland,” on the subject of allegations of child sexual abuse on the part of the deceased entertainer Michael Jackson, and in relation to Reed’s follow-up documentary film about this case. During all of their efforts in making the film and the sequel, Reed and Amos have been working for the News and Current Affairs Department of Channel 4 Television Corporation in the UK, which has funded the film and sequel. Like the BBC, Channel 4 is a major public service broadcaster owned by the UK Government. As explained in the accompanying declaration of Louisa Compton, Head of News and Current Affairs, Channel 4 has a UK statutory obligation “to provide current affairs broadcasting and to support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world and by challenging established views.”

Reed is a resident of the UK. He never has been a resident of California or anywhere else in the United States. By the time this motion is heard, Reed will have spent only 29 days in Los Angeles County this year, staying only in various Airbnb rental units, for the sole purpose of being able to film the proceedings of these cases with the Court’s permission. On October 18, Reed will fly back to his home in the UK, and he has no plans to visit California again until March of 2021. Amos is

1 a UK production company located exclusively in the UK. Amos never has had offices or any other
2 facilities in California or anywhere else in the United States.

3
4 As explained in this memorandum, the Subpoenas are defective in three ways. First, under
5 California law, there is no jurisdiction to compel a UK resident and a UK company with no offices
6 here to appear for depositions and produce documents in Los Angeles County. The MJJ Companies
7 presumably know this, because in their discovery plan submitted to the Court in this case, they advised
8 the Court that they would follow international procedures under the Hague Convention to try to obtain
9 the demanded information in the UK instead. Second, the California media shield law does not permit
10 the forced disclosure of unpublished materials and other confidential documents in this situation. As
11 journalists working for the News and Current Affairs Department of a public service television
12 broadcaster, Reed and Amos plainly qualify for media shield law protection. Third, Reed and Amos
13 are covered by related federal First Amendment journalist shield protections

14 These matters were discussed in “meet-and-confer” session with counsel for the MJJ
15 Companies last week, on October 5. While acknowledging that the Subpoenas may be legally
16 defective, counsel for the MJJ Companies declined to withdraw them. Although they indicated that
17 they might propose to narrow the scope of the Subpoenas in order to target specific information, no
18 such proposal was ever made. Instead, counsel for the MJJ Companies devoted their efforts to the
19 preparation of a large “brief” filed with the Court late last Friday afternoon, seeking to overturn the
20 Court’s Order allowing Reed and Amos to film these proceedings. We received no notice of this
21 application, in which the MJJ Companies (1) make arguments claiming that Reed and Amos are not
22 journalists and are not even documentary filmmakers, and (2) argue against our assertions of lack of
23 jurisdiction in relation to the Subpoenas. In essence, the MJJ Companies filed an opposition to our
24 motion to quash the Subpoenas, even before we filed the motion. In a second “meet-and-confer”
25 session on October 13, counsel for the MJJ Companies again declined to withdraw the Subpoenas.
26 They did offer to seek “only” all of the unpublished footage of the plaintiffs and to depose Reed and
27 Amos “only” about that footage, but their demands remain unlawful and unacceptable.

1
2 **II. FACTUAL BACKGROUND**

3 Daniel Reed is a Primetime Emmy Award winning documentary filmmaker and journalist who
4 is not a party to this case. (Compton Decl. ¶ 11; Reed Decl. ¶ 7) Reed is a citizen and resident of the
5 United Kingdom. (Declaration of Daniel Reed (“Reed Decl.” at ¶ 2). On or about August 25, 2020,
6 Reed requested the Court’s permission to film and record the proceedings in this case, following the
7 procedure set forth in Rule 1.150(e) of the California Rules of Court. (Reed Decl. ¶ 4). The Court
8 granted Reed’s request by order of the same date (the “Media Order”). *Id.* Reed and his production
9 company, Amos, are filming for the News and Current Affairs Department of Channel 4, a leading
10 national public service broadcaster in the UK, with the aim of providing a follow-up story to his
11 multiple award-winning documentary, “Leaving Neverland.” (Compton Decl. ¶ 3, 9)

12
13 In connection with their application to overturn the Court’s Media Order, the MJJ Companies
14 provided no notice to Reed, in violation of CRC 1.150(e)(5). (Holmes Decl. ¶ 6) Their brief and
15 accompanying declaration contain numerous alleged facts denigrating the status of Reed and Amos as
16 legitimate journalists, and apparently attempting to cast doubt on their assertions about lack of
17 jurisdiction over them in connection with the Subpoenas. (Reed Decl. ¶ 17, 20-32) While as non-
18 parties, Reed and Amos have no standing to oppose the application by the MJJ Companies, they do
19 refute the allegations of the MJJ Companies in connection with the issues involved in this motion to
20 quash. (Compton Decl. and Reed Decl.)

21 Rather than repeat the factual allegations in the accompanying Compton and Reed
22 Declarations, we respectfully refer the Court to the Declarations.

23
24
25 **III. ARGUMENTS**

26 Code of Civil Procedure section 1987.1 provides any witness may make a motion to quash a
27 subpoena and request a protective order upon reasonable notice. Cal. Code Civ. Proc. § 1987.1; *see*
28

1 *Lee v. Swansboro County Property Owners Assn.*, 151 Cal. App. 4th 575, 582-83 (2007). The court
2 has broad authority to quash or modify a subpoena, direct compliance with the subpoena on other
3 terms, or issue a protective order, or make any other order as may be appropriate to protect against
4 unreasonable or oppressive demands. *Id.* Pursuant to California Code of Civil Procedure Section
5 2017(c), any “affected person[s]” may move for a protective order against “burden, expense, or
6 intrusiveness ... that ... outweighs the likelihood that the information sought will lead to the discovery
7 of admissible evidence.” Cal. Code Civ. Proc. (“CCP”) § 2017(c).

8
9 The discovery plan of the MJJ Companies was filed with this Court on March 16, 2020 and
10 does not contemplate a subpoena to third parties, more specifically the makers of “Leaving
11 Neverland.” The MJJ Companies state, “[b]ecause the principal party that made the film is in the
12 United Kingdom, [MJJ] will need to invoke international discovery processes to take that party’s
13 deposition and seek the production of documents and other things such as recordings.” Page 5 & 7
14 Joint Status Report. Instead, the MJJ Companies improperly served the Subpoenas on non-parties
15 Reed and Amos, without following the procedure under the Hague Convention.

16 As discussed in more detail below, the Subpoenas served on non-party journalists Reed and
17 Amos will not lead to the discovery of admissible evidence, are intrusive and burdensome as they
18 conflict with the public policies embodied in the California media shield law and the First Amendment
19 reporter’s privilege.

20 21 **A. LACK OF SUBPOENA JURISDICTION**

22 This Court has no subpoena jurisdiction over Reed and Amos, because non-resident witnesses
23 cannot be compelled to appear or produce documents in California. Reed does not “reside” in
24 California. He lives and works in the United Kingdom. (Reed Decl. ¶ 2-3). A witness, including a
25 witness specified in subdivision (b) of Section 1987, is not obliged to attend as a witness before any
26 court, judge, justice or any other officer, unless the witness is a resident within the state at the time of
27 service. *See* California Code, Code of Civil Procedure §1989. Generally, under Section 1989, a non-
28 resident of California “is not obliged to attend as a witness before any court, judge, [or] justice ...” in
the State of California. *See Toyota Motor Corp. v. Super. Ct.*, 197 Cal. App. 4th 1107, 1110 (2011)

1 (where the Second District Court of Appeal held that a trial court lacks the power to compel a foreign
2 witness to attend a deposition in California.); *Twin Lock, Inc. v. Superior Court*, 52 Cal. 2d 754, 759
3 (1959) (including officers and directors of a corporation); *Amoco Chemical Company v. Certain*
4 *Underwriters at Lloyd's of London*, 34 Cal. App. 4th 554 (1995) (a subpoena duces tecum that
5 requires the attendance of a non-California custodian of record is invalid); *I-CA Enterprises, Inc. v.*
6 *Palram Americas, Inc.*, 235 Cal. App. 4th 257, 281 (2015) (“section 1989 applies not only to those
7 witnesses obliged to attend as witnesses in court proceedings, but those witnesses obliged to give
8 testimony by deposition before deposition officers”). While the California Supreme Court has
9 recognized that courts have “fundamental inherent equity, supervisory, and administrative powers, as
10 well as inherent power to control litigation before them,” *Rutherford v. Owens-Illinois, Inc.* 16 Cal.4th
11 953, 967 (1997), that power “may only be exercised to the extent not inconsistent with the federal or
12 state Constitutions, or California statutory law.” *Stephen Slesinger, Inc. v. Walt Disney Co.*, 155
13 Cal.App.4th 736, 762 (2007).

14 For purposes of subpoena jurisdiction, the Court *In re Morelli*, 11 Cal. App. 3d 819, 831
15 (1970) concluded that residency “envisages nothing more than an abode, possibly with a professional
16 base of operations, which gives the ‘resident’ a sojourning connection with the area of a type and
17 duration related to the status of a witness and which makes it not a hardship for him to attend the legal
18 proceedings at which he is commanded to appear.” In this instance, Reed’s abode or residence and
19 professional base of operation is in the United Kingdom and not in California. (Reed Decl. ¶¶2-3). He
20 has been in California only for short periods, to film the court hearings. (Reed Decl. ¶6). As of the date
21 of hearing scheduled for this Motion, Reed will have spent only 29 days in the Los Angeles area this
22 year, staying in various Airbnb rental units.¹ *Id.* Further, neither Reed nor Amos have any office
23 facilities in the United States. (Reed Decl. ¶ 3). Reed never has been a resident of the State of
24 California and requests this court to quash the subpoena on the basis of improper subpoena
25 jurisdiction. (Reed Decl. ¶ 2, 6). The appropriate method for service, as the MJJ Companies
26 recognized in their discovery plan filed with the Court, is through the procedures set forth in the
27 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Convention).

28 ¹ The relevant dates are: June 22, 2020 to June 30, 2020 (eight nights); September 19, 2020 to October 3, 2020 (14
nights); and October 11, 2020 to October 18, 2020 (7 nights)

1 Accordingly, Reed and Amos cannot be compelled to testify in Los Angeles, such that the
2 Subpoenas should be quashed.

3 **B. SHIELD LAW AND REPORTERS' PRIVILEGE PREVENT DISCLOSURE**

4 MJJ's demands in the Subpoenas pertain to unpublished information. (Exhibits I and J to Reed
5 Decl.). MJJ makes blanket demands for large amounts of confidential journalistic material, such as,
6 "[a]ll raw footage of the video-recorded interview(s) of" Robson, his family members and others,
7 "(whether or not the footage ultimately appeared in the film *Leaving Neverland*);" *Id.* (Requests for
8 Production 1-6) "[a]ll documents evidencing payment to" Robson, his family members and/or others,
9 including the Plaintiff Robson's law firm, "for any of their participation in the film;" *Id.* (Requests for
10 Production 10-11) "[a]ll communications (or documents evidencing communications) with" Robson,
11 his family members, and/or others, including the plaintiffs' law firm, relating to the Robson's claim
12 "that he was molested by Michael Jackson;" *Id.* (Requests for Production 12, 14) "[a]ll
13 communications (or documents evidencing communications) with" Robson, his family members,
14 and/or others, including the plaintiffs' law firm, "relating to the Robson and/or any of their
15 participation in *Leaving Neverland*;" *Id.* (Requests for Production 13, 15) "[a]ll communications (or
16 documents evidencing communications) between or among" Reed and/or Amos from whom they
17 "ever requested or sought an interview in connection with *Leaving Neverland*, but did not appear in
18 *Leaving Neverland* (or who only appeared by way of archived footage that was not specifically
19 recorded for *Leaving Neverland*;" *Id.* (Requests for Production 19) "[a]ll documents and
20 communications that relate to" Reed and/or Amos' "efforts to check any statements or claims made
21 by any person interviewed for *Leaving Neverland* (whether or not the person ultimately appeared in
22 the film *Leaving Neverland*);" *Id.* (Requests for Production 21) "[a]ll raw footage (including any
23 video-recorded interview) created for potential use in a future film or television program relating to
24 plaintiffs and their allegations that they were molested by Michael Jackson, and/or the action."
25 (Exhibits I and J to Reed Decl. Requests for Production 25).

26 California provides strong protections for journalists against the compelled disclosure of
27 sources and work product in cases in which the journalist is not a party. California's "shield laws,"
28 found in Article I, § 2(b) of the California Constitution and in California Evidence Code § 1070, are
broad.

1 California's shield law provides, in relevant part, that a person "connected with or employed
2 by a radio or television station, or any person who has been so connected or employed...[cannot] be
3 adjudged in contempt ...for refusing to disclose ...the source of any information procured while so
4 connected or employed for news or news commentary purposes on radio or television, or for refusing
5 to disclose any unpublished information obtained or prepared in gathering, receiving or processing of
6 information for communication to the public." Cal. Evid. Code § I 070(a); also 13 II Cal. Const. Art. I
7 § 2(b). The purpose of the shield law is to prevent compelled disclosure. *Delaney v. Sup.Ct.* (1990) 50
8 Cal.3d 785, 796; *N.Y. Times Co. v. Superior Court* (1990) 51 Cal.3d 453, 457. The reporter's privilege
9 plainly applied to Reed and Amos, who at all relevant times have been working for the News and
10 Current Affairs Department of Channel 4 Television, which, like the BBC, is one Britain's major
11 public service television broadcasters, owned by the UK Government.

12 The MJJ Companies' Subpoenas all conflict with the California Constitution, which shields
13 journalists from being required to disclose the information MJJ seeks. Cal. Const., art. I, § 2(b):

14 Nor shall a radio or television news reporter or other person connected with or
15 employed by a radio or television station, or any person who has been so connected
16 or employed, be so adjudged in contempt for refusing to disclose the source of any
17 information procured while so connected or employed for news or news
18 commentary purposes on radio or television, or for refusing to disclose any
19 unpublished information obtained or prepared in gathering, receiving or processing
20 of information for communication to the public.

21 As used in this subdivision, "unpublished information" includes information not
22 disseminated to the public by the person from whom disclosure is sought, whether
23 or not related information has been disseminated and includes, but is not limited
24 to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself
25 disseminated to the public through a medium of communication, whether or not
26 published information based upon or related to such material has been
27 disseminated.

28 The MJJ Companies seek to require that Reed and Amos produce large amounts of
"unpublished information," for instance, all documents and communications, including raw footage,
whether or not the footage ultimately appeared in the film, "Leaving Neverland," or likely to be
including any possible future film or television program. (See Exhibits I and J to Reed Decl.)

1 Non-party journalists Reed and Amos enjoy absolute protection under shield law. As the
2 California Supreme Court held in *New York Times Co. v. Superior Court*, 51 Cal.3d 453, 457 (1990),
3 the shield law provides “absolute protection to nonparty journalists in civil litigation from being
4 compelled to disclose unpublished information.” This absolute immunity cannot be overcome even
5 “by a showing of need for unpublished information.” *Id.* at 461; *see also Miller v. Superior Court*, 21
6 Cal.4th 883, 890 (1999) (“The shield law is, by its own terms, absolute rather than qualified in
7 immunizing a newsperson from contempt for revealing unpublished information obtained in the
8 newsgathering process”); *In re Willon*, 47 Cal. App. 4th 1080, 1090-91 (1996) (affirming the absolute
9 nature of the protection in civil cases).

10 California’s reporter’s privilege explicitly protects “any unpublished information” procured
11 while gathering information for communication to the public. Cal. Const. art. 1, § 2(b); Cal. Evid.
12 Code § 1070. “Unpublished information” is broadly defined, and extends to all information not
13 literally published. *Id. New York Times Co. v. Superior Court*, 51 Cal. 3d 453, 456. As the California
14 Supreme Court explained, “the use of the word ‘any’ makes clear that article I, section 2(b) applies to
15 all information, regardless of whether it was obtained in confidence.” *Delaney v. Superior Court*, 50
16 Cal. 3d 785, 798, 268 Cal. Rptr. 753 (1990). *Accord New York Times Co. v. Superior Court*, 51 Cal. 3d
17 453, 461-62, 796 P.2d 811, 273 Cal. Rptr. 98 (1990). The shield law thus immunizes from compelled
18 disclosure any information received, or materials generated or compiled, during the newsgathering
19 process that have not actually been published or broadcast.

20 Here, MJJ seeks to take the deposition of Reed, who is the managing director of Amos. Reed
21 obtained the various unpublished interview footage, documents and communications relating to
22 “Leaving Neverland” and its sequel from his newsgathering activities (*See Reed Decl.*). In the course
23 of gathering news, journalists like Reed often rely on various sources in order to obtain information on
24 matters of public interest. Forced disclosure of unpublished information, including raw footage used in
25 producing an informative documentary, will cause individuals to refuse to talk to reporters, resulting in
26 a “chilling effect” on the free flow of information and the public’s right to know. Moreover, using the
27 power of the state to compel journalists to become investigative arms of one side of a legal dispute
28 undermines their editorial independence and erodes the trust of their sources, which frustrates their
ability to gather information to the ultimate detriment of the public. *See Miller v. Superior Court*, 21

1 Cal.4th 883 (1999). All of the items sought from Reed and Amos are within the purposefully broad
2 scope of the shield law.

3 Further, California’s media shield law was intended to be broad in its reach, because it protects
4 all persons “connected with ... a newspaper, magazines, or other periodical publication...radio or
5 television station,” without limitation. Cal. Const. art. I, § 2(b); Cal. Evid. Code § 1070; *see also*,
6 *Playboy Enterprises, Inc. v. Superior Court*, 154 Cal.App.3d at 28-29 (1984) (shield law protects
7 nonparty publisher from the production of notes, tapes and records of an interview conducted by a
8 freelance reporter). Reed and Amos direct and produce documentaries related to war, terrorism and
9 crime. By virtue of directing the Primetime Emmy Award winning documentary film, “Leaving
10 Neverland,” for the News and Current Affairs department of Channel 4 Television, Reed and Amos
11 are undoubted connected with Channel 4 Television for the purpose of news gathering. The Court in
12 *O’Grady v. Superior Court*, 139 Cal. App. 4th 1423 (2006) rejected any attempt to limit the scope of
13 the shield law based on the type of journalism involved, broadly interpreting the shield law to include
14 an online blogger.

15 Further, the MJJ Companies, in their Brief seek to undermine the legitimacy of Reed and Amos
16 by labeling them as biased. It is not the role of the court to evaluate the objectivity or motive of any
17 journalist or media. The filming is significant as the subject of this action, child sexual abuse, is a
18 matter of public interest, that should be disseminated to the public. “[M]embers of the public [are]
19 generally concerned about the behavior of the [alleged abuser]....” *BRV, Inc. v. Superior Court*, 143
20 Cal. App. 4th 742 (2006) (accusation of sexual harassment). Trial thus “serve[s] a ‘therapeutic’ value
21 to the community,” allowing the public (through media) to evaluate the evidence and see that “justice
22 is meted out fairly.” *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1200-01
23 (1999) quoting *Richmond Newspapers v. Va.*, 448 U.S. 555, 570 (1980)); *See also In re Roman*
24 *Catholic Archbishop of Portland*, 62 Bank. Cas. 2d 742, *aff’d in relevant part*, 661 F 3.d 417 (9th Cir
25 2011) (where it was held that the extraordinary public interest in knowing whether minors were
sexually abused has compelled courts to lift sealing orders).

26 Accordingly, non-party journalists Reed and Amos are protected upon the *prima facie* showing
27 that the information was obtained “for the journalistic purpose of communicating information to the
28 public.” *Rancho Publ’ns. v. Superior Court*, 68 Cal.App.4th 1538, 1546 (1999). Again, Reed and

1 Amos are working for public service broadcaster Channel 4, which has a statutory obligation to
2 provide current affairs broadcasting and to support and stimulate well-informed debate on a wide
3 range of issues, including by providing access to information and views from around the world and by
4 challenging established views. (Compton Decl.) Reed, as mentioned above, is a journalist with almost
5 three decades of experience covering terrorism, war and crimes for a various broadcasters. (Compton
6 Decl. 3, 11; Reed Decl. ¶ 7) Accordingly, Reed and Amos are non-party journalists protected by the
7 California Constitution.

8 C. FIRST AMENDMENT SHIELD ALSO APPLIES

9 California courts also have recognized a reporter’s privilege under the First Amendment to the
10 U.S. Constitution and Article I, section 2(a) of the state constitution, which California courts recognize
11 as an independent ground for rejecting compelled disclosure of unpublished editorial information. *See*
12 *Mitchell v. Superior Court*, 37 Cal.3d 268, 277-279 (1984) (holding that the First Amendment to the
13 federal Constitution also confers a qualified privilege to withhold disclosure of unpublished
14 information); *Rancho Publ’ns.*, 68 Cal.App.4th at 1547-50 (listing cases in which California courts
15 have applied “the qualified constitutional privilege to block civil discovery that impinges upon free
16 speech or privacy concerns of the recipients of discovery demands and innocent third parties as well”);
17 *see also Shoen v. Shoen*, 5 F.3d 1289, 1293-97 (9th Cir. 1993) (*Shoen I*) (broadly applying First
18 Amendment privilege); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 436-37 (10th Cir. 1977) (where
19 the court held privilege applied to documentary filmmaker whose “mission...was to carry out
20 investigative reporting for use in the preparation of a documentary film”). This protection broadly
21 applies to all individuals who “gather, select, and prepare, for purposes of publication to a mass
22 audience, information about current events of interest and concern to that audience.” *O’Grady*, 139 Cal.
23 App. 4th at 1467. As reporters, editors or publishers, non-party journalists, Reed and Amos are entitled
24 to this constitutional privilege (*See* Reed Decl. ¶ 7, 8; Compton Decl. ¶ 2, 3, 6, 11).

25 The First Amendment’s protections are fully applicable to documentary filmmakers like Reed
26 and Amos. Films generally are considered “expressive works” subject to First Amendment
27 protections. *Guglielmi v. Spelling–Goldberg Productions* (1979) 25 Cal.3d 860, 872. Movies are a
28 “significant medium for the communication of ideas. They may affect public attitudes and behavior in
a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of

1 thought which characterizes all artistic expression. The importance of motion pictures as an organ of
2 public opinion is not lessened by the fact that they are designed to entertain as well as to inform.”
3 *Joseph Burstyn, Inc. v. Wilson* (1952) 343 U.S. 495, 501, 72 S.Ct. 777, 96 L.Ed. 1098, fn. omitted.)

4 The commercial aspect of a film is irrelevant. Whether exhibited in theaters or on television, a
5 film is a medium which is protected by the constitutional guarantees of free expression. (U.S. Const.,
6 1st & 14th Amends.; Cal. Const., art. I, § 2; *Joseph Burstyn, Inc.*, at pp. 501–502, 72 S.Ct. 777; *Red*
7 *Lion Broadcasting Co. v. FCC* (1969) 395 U.S. 367, 386–390, 89 S.Ct. 1794, 23 L.Ed.2d 371.) Nor do
8 films and movies lose their constitutional protection because they are undertaken to generate a profit.
9 *Guglielmi v. Spelling–Goldberg Productions*, at pp. 867–868, 160 Cal.Rptr. 352, 603 P.2d 454. In
10 short, “it is beyond dispute that movies involve free speech.” *Dyer v. Childress* (2007) 147
11 Cal.App.4th 1273, 1280, 55 Cal.Rptr.3d 544.) Because a film is an expressive work, its creation is also
12 an exercise of free speech. *See Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 143,
13 122 Cal.Rptr.3d 264 (creating, casting and broadcasting TV episode is exercise of free speech).

14 Here, “Leaving Neverland” and its sequel have been funded by a UK public service
15 broadcaster, Channel 4 Television, which uses its net revenues from such projects to invest in further
16 public service projects. (Compton Decl. ¶ 3)

17 In *Shoen I*, the Ninth Circuit Court found that a book writer had standing to invoke a reporter’s
18 privilege, holding: “What makes journalism journalism is not its format but its content. . . . The test . .
19 . is whether the person seeking to invoke the privilege had “the intent to use material – sought,
20 gathered or received – to disseminate information to the public and [whether] such intent existed at the
21 inception of the newsgathering process.” If both conditions are satisfied, then the privilege may be
22 invoked. *Shoen I*, 5 F.3d at 1293 (quoting test in *von Bulow v. von Bulow*, 811 F.2d 136, 144 (2nd Cir.
23 1987), *cert denied* 481 U.S. 1015 (1987)). The Court in *Shoen I* saw no difference in “manner of
24 dissemination” because “[t]he press in its historic connotation comprehends every sort of publication
25 which affords a vehicle of information and opinion.” *Id.* (quoting *von Bulow*, 811 F.2d at 144). Here,
26 the non-party journalist Reed plainly intended to use the material received from plaintiffs, their family
27 members and other sources to disseminate information to the public.

28 Accordingly, the independent First Amendment privilege provides an additional reason to
grant this motion of non-party journalists Reed and Amos.

1 **CONCLUSION**

2
3 For the foregoing reasons, Daniel Reed and Amos Pictures respectfully request that this motion
4 be granted and the Subpoenas be quashed in their entirety.

5
6 Dated: October 13, 2020

Respectfully submitted,

7
8 **SMITHDEHN LLP**

9 By: /s/ Jeffery Holmes
10 JEFFERY HOLMES
11 *Attorneys for non-party movants*
12 *Daniel Reed and Amos Pictures*
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3
4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is SmithDehn LLP,
6 654 San Juan Avenue, Venice Beach, Los Angeles, California 90291.

7 On October 14, 2020, I served true copies of the following documents(s) described as: **NOTICE**
8 **OF MOTION; NON-PARTY MOVANTS DANIEL REED AND AMOS PICTURES' MOTION**
9 **TO QUASH TWO SUBPOENAS DUCES TECUM; MEMORANDUM OF POINTS AND**
10 **AUTHORITIES IN SUPPORT; MEET AND CONFER DECLARATION OF JEFF HOLMES,**
11 **DECLARATION OF LUISA COMPTON, and DECLARATION OF DANIEL REED PLUS**
12 **EXHIBITS** on the interested parties in this action as follows:

11 John C. Manley
12 Vince W. Finaldi
13 Alex E. Cunny
14 MANLY, STEWART & FINALDI
15 19100 Von Karman Ave., Suite 800
16 Irvine, CA 92612

Attorneys for Plaintiff James Safechuck

Phone: 949-252-9990
Fax: 949-252-9991
Email: vfinaldi@manlystewart.com
jmanly@manlystewart.com
kfrederiksen@manlystewart.com
acunny@manlystewart.com

17
18 Howard Weitzman
19 Jonathan P. Steinsapir
20 Suann MacIsaac
21 Aaron Liskin
22 Katherine T. Kleindienst
23 KINSELLA WEITZMAN ISER KUMP &
24 ALDISERT LLP
25 808 Wilshire Boulevard,
26 Third Floor Santa Monica,
27 California 90401

Attorneys for Defendants MJJ
Productions, Inc., and MJJ Ventures, Inc.

Telephone: 310.566.9800
Facsimile: 310.566.9850
hweitzman@kwikalaw.com
jsteinsapir@kwikalaw.com
smacisaac@kwikalaw.com
aliskin@kwikalaw.com
kkleindienst@kwikalaw.com

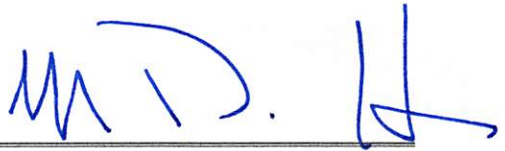
28 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
persons at the addresses listed in the Service List and placed the envelope for collection and mailing,

1 following our ordinary business practices. I am readily familiar with _____ practice
2 for collecting and processing correspondence for mailing. On the same day that the correspondence is
3 placed for collection and mailing, it is deposited in the ordinary course of business with the United
4 States Postal Service, in a sealed envelope with postage fully prepaid.

5 **BY E-MAIL OR E-SERVICE:** (Code Civ. Proc. § 1010.6, Cal. Rules of Court, rule 2.251) I
6 caused the document(s) to be sent from e-mail address jholmes@smithdehn.com to the persons at the
7 e-mail addresses listed above or the Service List. I did not receive, within a reasonable time after the
8 transmission, any electronic message or other indication that the transmission was unsuccessful.

9 **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package
10 provided by the overnight service carrier and addressed to the persons at the addresses listed above or
11 on the attached Service List. I placed the envelope or package for collection and overnight delivery at
12 an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s)
13 to a courier or driver authorized by the overnight service carrier to receive documents.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct. Executed on October 14, 2020, at Los Angeles, California.

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Make a Reservation

Success! Your Reservation Number is **791197722956**.

WADE ROBSON VS DOE 1 ET AL

Case Number: BC508502 Case Type: Civil Unlimited Category: Other Personal Injury/Property Damage/Wrongful Death
Date Filed: 2013-05-10 Location: Santa Monica Courthouse - Department M

Reservation

Case Name:	WADE ROBSON VS DOE 1 ET AL
Case Number:	BC508502
Type:	Motion to Quash (Subpoenas Duces Tecum)
Status:	RESERVED
Filing Party:	Daniel Reed (Party Role to be determined)
Location:	Santa Monica Courthouse - Department M
Date/Time:	04/09/2021 8:30 AM
Number of Motions:	1
Reservation ID:	791197722956
Confirmation Code:	CR-9NHC7UMDKQMQTMCVX

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Contact Information

Fields marked with an (*) are required

First Name *

Last Name *

Telephone Number * Extension

Primary Email *

Enter Email Again *

Secondary Email

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If the requestor wishes to receive notifications via text message, enter the mobile phone number.

Notification Number

Payment

Amount:	\$446.96
Type:	AmericanExpress
Account Number:	XXXX2012
Authorization:	204354

Instructions

Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.



A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.